Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

INDEX No:

RICHARD A. SCOCCA JR

Petitioner

v.

CENDANT MORTGAGE CORPORATION,
f/k/a PHH US MORTGAGE CORPORATION

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE THIRD CIRCUIT-COURT OF APPEALS

RE: Civil Action Index No. **2:04-cv-00704-SD**
Third Circuit-Court Appeal No **06-2477**

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------ QUESTIONS PRESENTED ------

Whether the 3rd circuit clerk's office abused its discretion (when)

(1) -- by negligently **omitting, from the reviewing panel,** (a ***'pro se'*** appeal) ***the complete*** *docket record filed* in the District Court;

(2) -- by submitting an **'erroneous docket sheet'** to the 3rd Circuit-Court panel on ***'09/21/06'*** that negligently omitted SCOCCA'S ***'Reply Brief'*** (including the ***'Newly Found Evidence'***);

(3) -- by recording **on 09/22/06** SCOCCA's ***'Reply Brief'*** as ***'08/08/06'***(date received) **on the docket;**

(4) -- by ***having the ability*** to make entries on the *'Official Docketing System'* **backward in time**?

(5) -- by negligently refuse to accept for non-compliance on 10/16/06 ***after timely receiving*** the *'Petition for Rehearing'* ***electronically*** on ***'10/10/06'*** and ***after timely receiving*** the *'Petition for Rehearing'* ***hardcopies***(4) on ***'10/16/06'***;

(6) -- ***erroneously files, on behalf of SCOCCA :***

(a) *on* ***'10/30/06'***, **this** *"Motion by Appellant Richard A. SCOCCA to review order dated 10/26/06"* ;

(b) *on* ***'11/03/06'***, ***the same*** *'Motion to file petition for rehearing out of time and suggestion for rehearing en banc'* **previously filed on 10/25/06** *denied* on **'10/26/06'** by the Authoring Judge **and**

(c) on ***'11/08/06'*** **denied this** erroneous '11/03/06' Motion with **misinterprets** the *Federal Rules of Appellate Procedures and* misrepresents the views of the Court ;

(7) -- negligently **failed to enter** two(2) motions to stay; *'Motion to stay **review** of order dated 10/26/06'*; and *'Motion to stay mandate to file writ of certiorari in Supreme Court'*; ***received by Clerk** of Court with signature on **11/9/06** ;*

Whether an authoring Judge (a senior circuit Judge) actions constitute (1)--abuse of discretion and / or (2)--miscarriage of justice[when]

(8) -- **denied** the *'Motion for leave to file a petition for rehearing out-of-time'*, supposedly one day untimely, knowing the 3rd Circuit-Court **normally grants such motions**; and

(9) -- the issuance of a *mandate,* **before panel review** ***(FRAP Rule 40 and IOP 10.8.1);***

(10) -- as **a non-active senior circuit Judge,** make a ***case-dispositive*** decision ;

(11) -- after instructing the clerk, to enter a "Motion to review that order" on behalf of **SCOCCA** and then ***denied*** *without review from the panel* **that erronious Motion ;**

(12) -- as a non-active Circuit Judge in Senior Status with **nether the authority** to Grant **nor** Deny ***any*** decision, **vote** on a *'Petition for Rehearing with the suggestion for En Banc*

Whether the 3rd District Court Judge abused discretion(when)

(13) -- on April 13th 2006, (responds as if *personally attacked)* associates **SCOCCA**'s April 12, 2006 ***'Motion for recussal'*** with his *'Motion for reconsideration under Rule 60(b)(2)' by* **disregarded** the ***"Newly Found Evidence" Exhibit "RAS 3(d)" attached*** ;

(14) -- this ***"Newly Found Evidence" overlooked*** **was:**

(a) ***acquired*** thru due diligence ***on or around 9 February 2006;***

(b) sufficient for reasonable doubt to reverse the November 8th 2004 order dismissing **SCOCCA**'s Complaint in its entirety? these 'CONSOLIDATED NOTES LOG'; and still, ***only part*** of the repeated requests for discovery from Cendant? ***(Exhibit RAS 3(a))***

(c) clearly show that **Cendant was aware of :**

(i) - the notice for delinquency of 1997 William Penn school taxes; and

(ii) - the tax sale for **SCOCCA** 's property scheduled for June 12, 2001; and

(iii) - the system problems with accounts payable that failed to pay the William Penn school 1997 taxes which Cendant failed to correct the problem; and

(iv) - at least four "Qualified Written Requests" for escrow information by **SCOCCA** , one written verbatim by HUD. ***(Exhibit "bb" and RAS 3(a));***

(15) -- refuse to sanction Cendant to produce discovery while ignoring **SCOCCA**'s persistent requests, especially when the RESPA 2605 claims, specifically addressed in the Complaint, includes Cendant's failure to produce escrow information from the past 3 years of "Qualified Written Requests" ***(see SCOCCA's 'Response to Motion to dismiss' pg 40-42 and 'Motion to set aside' pg 1&49 and 'Motion for Vacate and Reconsideration' pg 1,8-9 and 'Request Relief to file Motion For Reconsideration' pg 17-18— District Court Docket # 25, 30, #??(not entered) and 43, respectively)***

(16) -- knowing that he repeatedly refused requests to sanction Cendant for this discovery, would further deny **SCOCCA** **to Amend his Complaint** once this discovery is produced;

(17) -- by improper application of law to fact of Federal Statute RESPA 2606(a)(1) and *15 USC §1603(3).* (see ***District Court order on November 8th 2004)***

(18) -- by improper application of law to fact of Federal Statute RESPA 2605 ***(see District Court order on November 8th 2004)***

(19) -- by improper application of law to fact between 42 Pa.C.S.A. **§5524(7)** and **§5525(8)**, **'discovery rule' and** ***12 U.S.C § 2614 (see District Court order on November 8th 2004)***

(20) -- by improper application of law to fact of RESPA, CFR and ***HUD 4350.4 Chap.2 (see District Court order on November 8th 2004)***

(21) -- by improper application of law to fact of Federal Statute on FRAUD and 'misrepresentation of fact'***(see District Court order on November 8th 2004)***

(22) -- on December 23rd 2004, ***refused to reverse or modify his decision*** after correct interpretive of Federal Statute provided;

(23) -- **granted** Cendant ***relief to amend*** 'Motion to reply In Further Support Of Its motion to dismiss under FRCP Rule 12(b)(6)' and then **disregard** FRCP Rule 56 (see ***FRCP Rule 7 (a))***

(24) -- entered judgment ***3 days before*** response deadline to a request for relief to facilitate an amended 'Motion to dismiss' from Cendant under ***FRCP Rule 8***

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Parties to the Proceedings

The parties to the proceedings in the Pennsylvania Court of Appeal included Cendant Mortgage Corporation and petitioner Richard A Scocca Jr. There are no parties to the proceedings other than those named in the petition.

Petition for Writ of Certiorari

The petitioner, Richard A Scocca Jr, respectfully petitions this Court for a writ of certiorari to review the judgment and opinion of the Pennsylvania Court of Appeal, filed on 25 September 2006.

Opinions Below

The published opinion of the Pennsylvania Court of Appeal, which is the subject of this petition, was filed on 25 September 2006, and is attached as ***Appendix***. The Single Circuit-Court Judge Van Antwerpen one-page order denying *Motion for Rehearing out-of-time* and review is attached as ***Appendix***. The District Court order denying Motion pursuant 60(b)(2). For the convenience of the Court, the two motions to stay arguing the power of a single Judge filed 9 November **2006** (never entered) is attached as ***Appendix "X"***.

Jurisdiction

The decision of the 3rd Circuit-Court of Appeal to be reviewed was filed on 25 September 2006. This petition is filed within 90 days of that date.

> **"DISSENT:** CHIEF JUSTICE REHNQUIST, We have previously held that this Court may, in the exercise of its "supervisory authority," modify or reverse judgments of lower federal courts in accordance with principles derived neither from the United States Constitution nor from any Act of Congress. **United States v. Hasting, 461 U.S. 499, 505 (1983); Cupp v. Naughten, 414 U.S. 141, 146 (1973)."**
>
> "the observations of Chief Justice Marshall, writing for the Court in **Ex parte Burr, 9 Wheat. 529 (1824):** "Some doubts are felt in this Court respecting the extent of its authority as to the conduct of the Circuit and District Courts towards their officers; but without deciding on this question, the Court is not inclined to interpose, **unless it were in a case where the conduct of the Circuit or District Court was irregular, or was flagrantly improper." Id., at 530.**"

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 2072 "(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States courts of appeals" and 28 U.S.C. § 1254(1).

The "***Internal Operating Procedures***" (3rd Cit. IOP's) cover the essential processes of the Circuit-Court from the distribution of the briefs to the final termination of the appeal and are designed: To maintain the highest degree of collegiality among the judges and include **(Justice Holmes' definitions)** both legislative and administrative "all necessary orders for the effective and expeditious administration of the business of the courts within [each] circuit."

"These are reasonable, proper, and necessary rules, and the need for enforcement cannot reasonably be doubted. These internal rules do not come to public notice simply because reasonable judges acknowledge their necessity and abide by their intent. But if one judge in any system refuses to abide by such reasonable procedures it

can hardly be expected that when a single Judge decides to circumvent Circuit-Court review that this Court will not intervene with its supervisory jurisdiction."

Statement Of The Case

United States Supreme-Court may grant this writ of certiorari:

The principal issues raised on writ of certiorari are whether a single Circuit Judge in senior status has jurisdictional authority to deny SCOCCA's *'Motion for leave to file Petition for rehearing out-of-time'* without review from Circuit-Court; and whether the 3rd Circuit-Court panel would have denied SCOCCA relief to file Petition for rehearing out-of-time; and whether the 3rd Circuit-Court panel erred affirming the District Court's order denying SCOCCA's *'Motion for reconsideration for 'Newly Found Evidence' pursuant Rule 60(b)(2)'* without his ***'Reply Brief'*** which was 'apparently negligently omitted' by the office of the clerk; and whether the office of the clerk should have the ability to make docket entries (i.e. ***'Reply Brief'***) backward in time and the failure to enter SCOCCA's *'Motion for stay of mandate'* and/or *'Motion to stay Bogus review pending writ of certiorari'* on the 'Official Docket Record' was abuse of discretion; and whether the District Court order denying SCOCCA's *'Motion for reconsideration for 'Newly Found Evidence' pursuant Rule 60(b)(2)'* was abuse of discretion; and whether the District Court order dismissing SCOCCA's *Complaint for Breach of Fiduciary Duty, Breach of Contract, Fraud and violations of RESPA* was manifest injustice.

These concerns encompass both the law's preference that cases be disposed of on the merits, see **Pomales, 342 F.3d at 48**, and procedural aspects such as notice and an opportunity to be heard, see **Ortiz-Anglada, 183 F.3d at 67**. Thus, justifies this courts inquiry into both the substance of the court's order and the procedure by which the [order] was imposed. This inquiry involves a variety of important considerations: Among those (this list is not complete) are the severity of the violation, the legitimacy of the offender's excuse, repetition of violations, the deliberateness vel non of the misconduct, mitigating excuses, prejudice to Scocca and to the operations of the court, and the adequacy of clerical controls. . . . There is also a procedural dimension. **Robson, 81 F.3d at 2-3**. We look at the

substance first. There is no pattern of SCOCCA repeatedly flouting court orders. e.g., **Crossman v. Raytheon Long Term Disability Plan, 316 F.3d 36, 39 & n.2 (1st Cir. 2002)** ("noting the importance generally of finding a pattern or series of disobedience and reversing an order of dismissal where all of the alleged infractions stemmed from noncompliance with a single order"). This circuit has not sustained a dismissal imposed solely for a single allegation of noncompliance -- at least where that noncompliance was brought to the attention of the court prior to dismissing the case. Robson comes closest, but it involved the more serious violations of a variety of pre-trial deadlines on the eve of trial, which were brought to the court's attention on the morning of trial itself. See **Robson, 81 F.3d at 2**. Context makes those much more serious infractions than what is involved here. Also, in Robson this Court vacated the dismissal; only the single Judge considered the validity of proffered excuses and thus there is an insufficient basis to uphold the dismissal on writ of certiorari. At the time the single Judge dismissed the appeal, ***the Petition for rehearing deadline had been allegedly violated by approximately one(1) day(the hardcopy) and a minus three(3) days for electronic filing, if we use the clerks calculations of cut-off date.*** In **Ortiz-Anglada**, a delay of seven months was insufficient to warrant dismissal with prejudice. **183 F.3d at 66-67**. In Pomales, a four-month delay "did not alone constitute misconduct sufficiently extreme to justify dismissal with prejudice." **342 F.3d at 49**. Concluding that this petitioner "had done all that could reasonably be expected" to file a timely Petition for rehearing electronically and by mailing (six days before the Petition was due) to the clerk's office. The Supreme Court states: *"we declined to read the Rules so rigidly as to bar a determination of his appeal on the merits"*

SCOCCA's delay here, one that came with seeking prior alternative method of correspondence consent, is not a case of extreme misconduct warranting finality without Rehearing -- particularly in light of the 'default order' in the District Court by the honorable Judge Schiller *(Docket #6 entered: 04/06/2004)* when Cendant failed to respond to SCOCCA's Complaint then reversed by Judge Dalzell *(Docket #19 entered: 07/12/2004)*

Finally, this petitioner can rely on **Federal Rule of Appellate Procedure 40(a)** as the source of the Appellate Circuit Court's

authority in this case; states, in relevant part, that-- >> *[see Appendix "FRAP Rule 47"]*

Single Judge Denied Petition For Rehearing Out-Of-Time

This writ of certiorari presents a question of not so much appellate procedure as it is defiance of appellate procedures. Specifically, it implicates the practice of permitting a single Judge the power to dismiss an appeal with errors or at all, contrary to ***Rule 46(c)***

Within the general consideration of procedure on motions is the problem of the power of a single circuit judge. Certain powers are granted to a single judge of a court of appeals by statute. (see ***FRAP Rule 27***(c)) This section preserves the interpretation established by the Textile Mills case but provides in subsection *"(c) that cases shall be heard by a court of not more than three judges unless the court has provided for hearing in banc."* This provision continues the tradition of a three-judge appellate court and makes the decision of a division, the decision of the court, unless rehearing en banc is ordered. Subsec. (c). Pub. L. 97–164, §§ 103(c), 205, except that any senior circuit judge of the circuit shall be eligible to participate, at his election and upon designation and assignment pursuant to section 294 (c) of this title and the rules of the circuit, as a member of an en banc court reviewing a decision of a panel of which such judge was a member, continue to participate in the decision of a case or controversy '**that was heard** or reheard by the court en banc at a time **when such Judge was in regular active service'.**

We need not decide which Rule controls the present case, because neither authorizes a single Judge's action here. Furthermore, those various sections of the Judicial Code provide that each of these functions shall be performed by the court.

"A court of appeals may by order or rule abridge the power of a single judge if it is of the view that a motion or a class of motions should be disposed of by a panel." ***(28 U.S.C., § 219)***-Exercise of any power granted a single judge is discretionary with the judge. The final sentence in this subdivision makes the disposition of any matter by a single judge subject to review by the court. if rehearing out-of-time is denied and a mandate issued but not disposed of by a panel, a review of that single Judge's action **can only be initiated by the Circuit-**

Court panel, ***so why then did the clerk's office file this 'bogus' Motion for review of order 'by Appellant'.***

At the time the Clerk of the Court entered the order and mandate, on **26** October 2006, which **denied SCOCCA**'s "Motion for leave to file a '***Petition for Rehearing*** Out-Of-Time'(filed **25** October 2006)", A **single Judge**, Judge Van Antwerpen, the **authoring Judge** and in **Senior Status** as of **23** October 2006 did not have the authority nor was he eligible to instruct the Clerk of the Court to enter such an order. ***(see IOP 9.5.8, 10.4 and 10.5.1)***

The clerk's office inappropriately entered on 30 October 2006 this *"Motion by Richard A SCOCCA Jr Appellant to review the order on October 26th 2006"* on behalf of SCOCCA. This becomes even more difficult to accept when, the clerk did not receive any documents from **SCOCCA** between 26 October 2006(the *order denying rehearing out-of-time filed along with the issued mandate*) and 9 November 2006 *(Motions for stay to file writ of certiorari)* which the clerk failed and/or refused to enter. The two motions filed were printed by ***'Kinko's' FedEx***. This is important because Kinko's received a electronic PDF file online then it is downloaded, **recorded** and printed(*Philadelphia store, Chestnut St.*), it is then sent via FedEx **signed for by the Clerk** of the Appellate Court, also recorded. 'FedEx Kinko's' has a complete record in detail of this correspondence.(i.e. job ticket #, description of document, the PDF file and of course FedEx tracking # with signature) **So if these documents are also missing from the 'Official Docket Record', there is a paper trail and PDF file that can be reproduced, if necessary.**

The exact reasons discussed in these motions to stay should be repeated for this Court of last resort to grant a writ of certiorari because the big picture is quite dim.

>> ***[see Appendix "X"]*** **includes the body *only* of those motions:**

Therefore, this senior('retired') circuit Judge, may not vote and may not author unless requested by chief Judge **10.3.1** or pursuant to ***28 U.S.C. § 46(c)*** and **28 U.S.C. § 294(d)**. "No retired justice or judge shall perform judicial duties except when designated and

assigned." *28 U.S.C. § 294(e).* Essentially and apparently, with the knowledge of **FRAP** and **LAR** and **IOP** and to the contrary, this senior circuit Judge authored and ***personally*** denied both motions, the '*Motion for rehearing out-of-time*' and the *Motion* **or** *Order* for review of this same case dispositive ruling of October 26th 2006 order.

If the Circuit Court of Appeals had ***no*** *jurisdiction to review the order of a circuit judge*, its determination to deny the review of order on October 26th 2006 should be reversed regardless of the question whether the Circuit Judge acted in excess of its powers, and regardless, also, of whether Petition for rehearing out-of-time was the proper remedy, leaving those questions to be reviewed by appropriate procedure(i.e. writ of certiorari). ***First National Bank v. Chicago Title & Trust Co., 198 U.S. 280. This is certainly not the case.***

The Appellate-Court denying to review, the erroneous order of a single circuit Judge which was filed **one day after** the *Motion for Rehearing out-of-time,* is inconsistent with its own Internal Operating Procedure **10.8.1 "If the authoring judge votes to deny, the motion is referred to the entire panel for disposition"** and an abuse of discretion. ***LAR 111.7(b)***

The Supreme-Court has exclusive jurisdiction, to review the order discharging the petitioner, which was based upon a finding that the petitioner had been deprived of his liberty by an excess of power, involving the construction and application of the Constitution. The assumption of jurisdiction by the Circuit Court of Appeals warrants and requires the intervention of this Court. Jud. Code, § 238; **Raton Water Works Co. v. Raton, 249 U.S. 552,** and other cases.

3rd Circuit-Court review for *correctness* on Petition for Rehearing

SCOCCA thru due diligence was able to obtain a small piece of the 'discovery' constantly requested and consistently denied by the District Court. This '***Newly Found Evidence***' had been included in the very same motion for relief under **Rule 60(b)(1) and (2),** reviewed, but apparently overlooked by the 3rd Circuit-Court panel. In light of the questionable past history with the case, along with the Motion, a recusal of Judge Dalzell was filed. somehow, the two motions were combined as a 'Motion for Reconsideration' **Rule 60(b)** tribute to a recusal. **>>** ***[see Appendix "X1"]*** Both motions were

denied for the same reason; ***recusal had no grounds***. The 3rd Circuit-Court affirmed but misconstrued **SCOCCA**'s appeal as an attempt to resurrect a *'reopen time to file appeal'* disguised as a **Rule 60(b)** Motion. **>>** *[see* ***Appendix "X2"****]*

Applying the [*United States* v.] *Bagley* [***473 U.S. 667*** (1985)] standard here by examining whether it is reasonably probable that, had the undisclosed information been available to panel, the result would have been different.

In this case, disclosure of the suppressed ***evidence*** to the Appellate-Court panel would have made a different result reasonably probable, If the decision is read, shall we say, cumulatively, it is clear beyond cavil that the Appellate-Court failed to assess the cumulative effect of the ***'Newly Found Evidence'*** *and* ***'Reply Brief'*** **evidence** in the context of the whole record. (basing its rejection of petitioner's claim on "a ***selective reading*** of the complete 'Pro Se' docket record"); Finally, **SCOCCA** falls back on this: "The result reached by the 3rd Circuit majority is compatible with a series of independent materiality evaluations, rather than the cumulative evaluation required by *Bagley*," *ante*, at 22. In other words, even though the 3rd Circuit plainly enunciated the *correct* legal rule, the 3rd Circuit must in fact (and unbeknownst to itself) have been applying an *incorrect* legal rule, since the outcome it reached would not properly follow **SCOCCA**'s Motion in the District Court. This effectively eliminates all distinction between mistake in law and mistake in application. .

Clearly, the ***'Reply Brief'*** document contained evidence supporting **SCOCCA**'s claim regarding the correctness of the District Court order. Thus, the documents were relevant to the outcome of the appeal proceedings since the Federal District Court based its denial of reconsideration of ***Newly Found Evidence*** on the premise that there was *no reference to* ***Newly Found Evidence*** supporting **SCOCCA**'s claim. The documents showed that precisely such evidence was then available. Why had the District Court denied the existence of *any* such evidence? Why had Authoring Judge van Antwerpen and the other members of the panel done the same?

An Appellate-Court exists to correct legal errors made in the District Court. Its decision was made on the basis of the record before it, and that record apparently lacked the relevant documents. How

then could the Supreme Court say that the Appellate-Court was wrong to affirm.

The Supreme Court can easily answer this question by *not* holding that the Appellate-Court had erred. Finding that the relevant documents had been "apparently negligently omitted" from the record, except for the Appellate-Court never exercised its equitable powers to supplement the record with the ***'Reply Brief'*** or the ***'Newly Found Evidence'***. Then, relying on its **"inherent power to deny rehearing out-of-time"** in fact, eliminating reconsideration of its opinion "prior to the review of SCOCCA's Petition for Rehearing".

The explanation of how the ***'evidence'*** was overlooked is inaccurate in several respects. For example, if the documents were not in the initial record on appeal, and the panel previously had not seen these documents before the rehearing stage or at all, would convey the wrong impression. Although the evidence was not part of the Petition for rehearing out-of-time judgment record, the documents were included in the certified record on appeal as attachments to District Court **Rule 60(b)(2)** motion. *Exhibit RAS 3(d); Docket Entry (#44) 4/12/06 in No. 2:04-cv-00704-SD (ED Penn.); Docket Entry 7/14/06 & 8/8/06 in No. 06-2477 (3d Cir. App).*

Any dissent can argue SCOCCA's Appeal Brief did not adequately bring the evidence to the attention of the Court of Appeals. This is simply untrue. The original panel opinion, which did not discuss the ***'Newly Found Evidence'*** in any detail, emphasized that they affirm the District Court decision in that, SCOCCA's appeal rests with-- **>>** ***[see Appendix "X3"]***

How had the panel overlooked the copies of Exhibit RAS 3(d), Cendant's 'Consolidated Notes Log' attached to (1) the 'Supplemental Appendix' by Appellee Cendant Mtg granted entry on motion and (2) the (**Rule 60(b)**-related) motion in the District Court that was the reason for the appeal in first place? As for the ***'Appeal Brief'***, absent the ***'Reply Brief'***, the reason could well lie in the (incorrect) suggestion that the panel should view every part of the original record and every order from the District Court in detail. While the appeal brief explains the circumstances, it does not explain the importance of the documents, namely, that the panel should start with the ***'Newly Found Evidence'*** documents. Instead, it gives the

impression that SCOCCA was simply reemphasizing a Motion for reconsideration in the District Court. To that extent, the petition reduced the likelihood that the panel would make the connection and weakened his argument for appeal.

The '***Reply Brief***' and the **'Petition for Rehearing'** attacked this conclusion in no uncertain terms and placed the ***Newly Found Evidence'*** front and center. Here, for example, is an excerpt from the petition: >> *[see* ***Appendix "X4"*** *emphasis* ***omitted*** *]*

Office Of The Clerk failed to enter Timely Petition for Rehearing

Appellant may electronically file a 'Petition for rehearing' and 'Motion for leave to file a Petition for rehearing out-of-time'; a denial of the *Motion For Rehearing out-of-time* and the mandate issued on **the same day** as the Court order from the authoring Judge would make a panel review logistically impossible. >> *[see* ***Appendix "FRAP 25(a)(2)(D)"]***

The amendment for the three-day extension provided by **Rule 26 (c)** (mailbox rule) also expresses a desire that when reasonable, service on a party be accomplished by a manner as expeditious as the manner used to file the paper with the court. The reasonableness standard is included so that if a paper must be served in a different city, state, region, or ***country***, personal service on them ordinarily will not be expected. "*If use of an equally expeditious manner of service is not reasonable, use of the next most expeditious manner may be. But in most instances should be by overnight courier*". Even that may not be required, however, if the number of correspondences would make the use of FedEx service too costly. Not at issue here, "a factor that bears upon the reasonableness of serving parties expeditiously **is the immediacy of the relief** requested"; **Since the Court may extend the time for filing as Rule 40 allows.** The amendment makes it clear that **it is sufficient to use First-Class Mail**. **Other equally or more expeditious classes of mail service**, such as Express Mail and **the use of commercial carriers,** also may be used, **as long as they are reliable.** We must also consider the efficiency of the services available. (i.e. St. Lucia has ***NO*** '***McDonalds'*** and '**supermarkets**' have a section for ***Stationary***)

When the language requiring a party to use **Rule 25 (a)** "*a clerk **may not** refuse to accept for filing a document because it is not in the proper form.*" Apparently, the *'Petition for Rehearing' and 'Motion to stay mandate for Writ of Certiorari'* were **negligently omitted**. The clerk must accept such a paper. If a party, for example, fails to file the required number of copies, the failure does not create a jurisdictional defect. **Rule 3(a) states: "***Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such*" . . action as the court of appeals deems appropriate.

The aim here is to protect against loss of rights in the enforcement of local rules relating to matters of form. The proscription of paragraph (2) is narrowly drawn—covering only violations that are not willful and only those involving local rules directed to matters of form.

Rule 25 (b). This rule provides flexibility to the court in regulating practice in a particular case **when there is no controlling law**. Specifically, it permits the court to regulate practice in any manner consistent with Acts of Congress, with rules adopted under 28 U.S.C. § 2072. In addition, a Court of Appeals have considerable discretion to use local rules to regulate electronic service since, difficult and presently unforeseeable questions are likely to arise as electronic service becomes more common. **The Circuit Courts have this flexibility to use their local rules to address those questions.**

Rule 25 (a)(2)(D) presently authorizes the courts of appeals to permit papers to be **filed** by electronic means. **Rule 25** has been amended in several respects to permit papers also to be **served** electronically. In addition, **Rule 25 (c)(1)(D)** has been added to permit service to be made electronically, such as by **'e-mail'** or **'fax'**. **"***No party may be served electronically, either by the clerk or by another party, unless the party has consented in writing to such service*". Parties also have the flexibility to define the terms of their consent; a party's consent to electronic service does not have to be "all-or-nothing."

In the 3rd Circuit-Court of Appeals electronically filed Petition for rehearing should be directed to electronic address ***petitions_rehearing@ca3.uscourts.gov***; which SCOCCA overlooked

and mistakenly used the electronic address for Briefs, ***electronic_briefs@ca3.uscourts.gov.*** The hardcopy (1) should be mailed to the appellate Court overnight or expeditiously as the correspondence between parties.

There is one exception to **Rule 25(c)(4) >>** ***[see Appendix "FRAP 25(c)(4)"]*** (this brings up the issue: **SCOCCA denied ECF access)**

This one exception to **Rule 25(c)(4)** is a companion to Rule 26 (c) that has been amended to provide that when a paper is served on a party by electronic means, and that party is ***required or permitted to respond to that paper within a prescribed period,*** **3 calendar days are added to the prescribed period**. Electronic service is usually instantaneous, but sometimes it is not, because of technical problems. Also, if a paper is electronically transmitted to a party on a Friday evening, the party may not realize that he or she has been served until two or three days later. Finally, extending the "3-day rule" to electronic service will encourage parties to consent to such service under **Rule 25 (c).** (electronic service does not have to be "all-or-nothing") Since **Rule 40(a)** requires a response **within 14 days from the "electronic entry" of the Court**, 3 calendar days must be added to the prescribed period; ***subsequently*** adding 3 calendar days to the date of service if service is made by mail. (the three-day extension provided by **Rule 26 (c)** "mailbox rule" --make the three-day extension applicable not only when service is accomplished by mail)

In other words, if service is by electronic means*(online access to the Appellate Court opinion entered on 25 September 2006)* ***and (see FRAP Rule 36(b))*** **where a response is required** *(within 14 days)* **and the response is *also by electronic means* then 3 days will be added to prescribed period;** *("Petition for Rehearing made electronically on 10 October 2006")* **if service is by electronic means** where a *response is required* and the **response is made by mail** then *3 days will be added* to prescribed period to respond ***and*** *3 days will be added* **to service by mail**. *(hardcopy received by clerk on 16 October 2006)*

It should also be noted, **by order of the clerk**, ***SCOCCA will not be notified*** by electronic means('e-mail' or fax), even though, more than once the clerk notified **SCOCCA** (via 'e-mail') to correct

deficiencies before resubmitting; conversely, the clerk notified Cendant of ***the Appellate Court opinion on 25 September 2006*** by e-mail. ***(see 28a USC 45(c))***

Petition for Rehearing made by either means, was timely

Petition for Rehearing may be made within 14 days of the Appellate Court opinion ***electronically filed*** (docket entry ***only accessible online)*** on 25 September 2006. A Response filed ***electronically*** was due 13 October 2006(**accomplished 10 October 2006).** A Response made by mail- was due 16 October 2006(**hardcopy received by clerk on 16 October 2006**). Therefore, SCOCCA's Petition for Rehearing made by either means, was **timely**! In addition, the Clerk (Order) **denied** an alternative means of correspondence between appellant and the Court, knowing that SCOCCA was temporarily residing in another country, but will send and receive correspondence between Cendant. Coincidently or opportunistically forcing into action ***this non-compliance letter, day one(1) of*** which the clerk erroneously believed to be the cut off day and conspicuously **the same day the Petition for Rehearing was received.**(see docket on **11/08/06**)

Office Of The Clerk (3rd cir.) Failed To Enter Motion(s) To Stay

The two motions printed by *'FedEx Kinko's'* received by carrier on 11/09/06 the Clerk of the Court abused its discretion by failing to enter SCOCCA's *'Motion to stay mandate to file petition for writ of certiorari'* **Rule 41(d)(2)**, in abeyance for a Supreme Court ruling before decision of panel review of 26 October 2006 order which denied his 'Motion for leave to file Petition for Rehearing out-of-time'; this Rule's authority to 'stay of mandate' is not limited to the period following the denial of certiorari; here the clerk's office failed to enter documents filed with the court.

Office Of The Clerk (3rd cir.) Erroneous 'Motion for Review'

The *'Motion for review by appellant Richard A Scocca Jr of October 26, 2006 order'* is suspect. The *Motion for review* ---was construed from? On 30 October 2006, after an e-mail to Senior Adviser to the Clerks(Bradford Baldus) where SCOCCA points out under **IOP 10.8.1** and Rule 58 a denial of a *'Motion for Rehearing*

out-of-time' from the authoring Judge must be sent to the panel for review, the clerk speciously filed an 'order for review' issued by the Court of Appeals as a Motion ***by Appellant*** to review order. This approach is twofold. On the one hand, maybe SCOCCA's **e-mail,** misconstrued as a Motion, ***was filed.*** If this is true then **1.)** the clerk failed to follow the Federal Rules Of Appellate Procedure regarding motions***(Rule 26, 31, 35 and 46);*** **2.)** inconsistent with SCOCCA's electronically filed Petition for Rehearing and with the timely received hardcopies, ***neither filed***; ***(Rule 25,26)*** and **3.)** conflicting with SCOCCA's two Motion's to stay pending writ of certiorari, accepted by the Clerk of the Court, also ***never filed.*** this ***'Motion for review'*** is a Motion with **NO Motion attached** or argument to consider; even more important, no such rule governing a party to motion for review of order in a civil matter other than tax and bankruptcy or agency, *exists*. (i.e. Rules 15 through 20 apply to proceedings for review of administrative agencies, boards, commissions and officers) In addition, the disposition can only follow an administrative path, since, on the face it **appears** to have been filed by Appellant as opposed to **a review ordered by the panel**. Also difficult to appreciate, the authoring Judge **denied** the 'Motion for review' of this *'procedurally anarchic order'*; if this review was ordered by the panel the authoring Judge would have been instructed to file either, **to affirm or to reverse the order**. This Court may assume these erroneous entry's and/or omissions from the 'Official Docket Record' were apparently negligently ***'the fault of the clerk'***; at the very least, inconsistent with the Federal Rules Of Appellate Procedure. The "presumption of regularity" in this case, lends no support to the speculation for a claim that **"the failure to make these docket entries was likely due to a simple clerical error"** on the part of the Clerk's office.

On the other hand, SCOCCA contends that if the *'review of October 26, 2006 order'* was issued by Court of Appeals then it is **an automatic recall of the mandate**. The Court of Appeals' decision to revisit its earlier order/opinion must satisfy the standard established by **Calderon v. Thompson , 523 U.S. 538, 140 L. Ed. 2d 728, 118 S. Ct. 1489 (1998)**. *Calderon* held that "where a federal court of appeals recalls its mandate to revisit the merits of an earlier decision denying habeas corpus relief to a state prisoner, the court abuses its discretion unless it acts to avoid a miscarriage of justice as defined by our

habeas corpus jurisprudence." ***Id., at 558, 140 L. Ed. 2d 728, 118 S. Ct. 1489***. *See also* ***Schlup v. Delo, 513 U.S. 298, 130 L. Ed. 2d 808, 115 S. Ct. 851 (1995)***; ***Sawyer v. Whitley, 505 U.S. 333, 120 L. Ed. 2d 269, 112 S. Ct. 2514 (1992)***.

In the typical case, where the *stay of mandate* is filed solely to allow the Supreme Court to consider a petition for certiorari, it can also provides a mechanism for correcting errors in the courts of appeals before Supreme Court review is requested. The Federal Rules of Appellate Procedure ensure that litigation following the denial of certiorari will be infrequent. See **Fed. Rule App. Proc. 40(a)** (*"Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment"*). See also **Fed. Rules App. Proc. 35** (rehearing en banc), rule 40 (panel rehearing)."Basic to the operation of the judicial system is the principle that a court speaks through its judgments and orders." **Murdaugh Volkswagen, Inc. v. First National Bank of South Carolina, 741 F.2d 41, 44 (CA4 1984).** Without a formal docket entry neither the parties nor this Court have, any way to know whether the court had stayed the mandate or simply made a clerical mistake. Cf. **Ballard v. Comm'r, 544 U.S. 544 U.S. 40, 161 L. Ed. 2d 227, 125 S. Ct. 1270 (2005) .**

Five(5) Chances To Take Corrective Action (3RD Circuit-Court)

In the District Court, this '***Newly Found Evidence***' was included in the record on Motion pursuant FRCP 60(b)(2).

The court's opportunity to consider these arguments at the '*Motion for Rehearing out-of-time'* and *the review* of the single Judge order stage is yet another factor supporting a determination that the decision to deny *Motion for Rehearing Out-Of-Time* was in error. Cf. **Calderon v. Thompson, supra , at 551-553, 140 L. Ed. 2d 728, 118 S. Ct. 1489** (questioning whether a "mishandled law clerk transition" and the "failure of another judge to notice the action proposed by the original panel" would justify recalling the mandate in a non-habeas case).

The Appellate-Court had **five (5) opportunities** (*if we include the Petition for Rehearing and the Motions to Stay;* ***filed but never entered***) to conduct an evidentiary review to determine if in fact the

Appellate panel affirmed the District Court opinion without SCOCCA's ***Reply Brief*** and if so, whether the decision was thereby tainted. Therefore, this review process must have been denied or eliminated. ***Townsend v. Sain, 372 U.S. 293 (1963), and United States ex rel. McNair v. New Jersey, 492 F. 2d 1307 (CA3 1974)***

In this case **SCOCCA**'s petition for rehearing and suggestion for rehearing en banc pressed the same arguments, the ***'Reply Brief'*** evidence was omitted and presented to the Court of Appeals as an attachment to **SCOCCA**'s motion to stay *'the review of order'* in abeyance. Unfortunately, the Petition for Rehearing and Motion to stay never appeared in the docket record, but the Motion for leave to file a Petition for rehearing out-of-time and Suggestion for Rehearing En Banc **did**.

3rd Circuit-Court Affirmed Order From District Court Denying 'Motion For Relief Pursuant To 60(b)(2)'

Without The 'Newly Found Evidence' The District Court concluded that Cendant as mortgagor and servicer of a *Federally Insured Mortgage* (HUD/FHA) and failure to pay school taxes resulted in a tax sale of SCOCCA's property, did not have FIDUCIARY DUTY under contract or Federal Regulations; regardless of the **FIDUCIARY DUTY established as part of the "deed of trust".** ***(see HUD 4350.4 Chap. 2)*** and 2) Pennsylvania's **"discovery rule. Statue of limitation and two-year statute-of-frauds** bars it, see ***42 Pa.C.S.A. § 5524(7)*** rather than ***42 Pa.C.S.A. § 5525(8)*** even though **the limitation for violations under RESPA *12 U.S.C. § 2605* must be within 3 years.** ***(see 12 U.S.C § 2614)***; and 3) his FHA property was a rental therefore **primarily for commercial purposes**, ***(see 15 USC § 1603(3) and 12 C.F.R. 202.2)*** **and *12 U.S.C. § 2606(a)(1)***; and 4) **12 USC §2605 (e)(1)**and(2) **"Plaintiff never sent a "qualified written requests"** "...these sections apply only when the Plaintiff sent a "qualified written request" for loan information", ***(see 12 U.S.C. § 2605)*** BUT, RESPA section **12 U.S.C. § 2605(e)(1)(B)** applies because Plaintiff has sent several **"qualified written request"** for loan information to Cendant. ***(see District Court-- Exhibit "bb", "RAS 2(a)*** and 2(b)", "RAS 3(a)" and "RAS 3(d)" 'CONSOLIDATED NOTES LOG' -- ***Newly Found Evidence***), Amended Complaint (see also *'Response to Motion to Dismiss'*).

Furthermore and most importantly: [1]

3rd District Court Improper Application of Law to Fact 60(b)(6)

The very same argument SCOCCA presented on appeal was included in his Motion to set-aside pursuant **Rule 59(e) "new trial" and "manifest injustice"** ***(DENIED)*** in the District Court filed less than 10days after November 8th 2004 Order and Judgment ***DISMISSING*** Complaint. In this Motion, among other things, SCOCCA once again brought to the attention of the District Court, the need for a order by the Court to sanctions Cendant to produce the discovery requested so he could structure a complete and proper forum before trial. In so many words, the request was again Denied, along with any chance for a future amended Complaint based on **60(b)(6)** under an abuse of discretion standard. Generally, an abuse of discretion may be found in a denial of a 60(b) motion when "the District Court's decision rests upon a clearly erroneous finding of fact, an errant conclusion of law or an improper application of law to fact." ***Int'l Union,UAW v. Mack Trucks, Inc.820 F.2d 91,95 (3d Cir. 1987)***

Conclusion

Erroneous 'Motion For Review' Made Panel Review Impossible

The law gives the Appellate Court in such a case the right to have the whole question on facts and law reviewed by three judges of the Circuit Court of Appeals who have had no part in the proceedings, and if appellant is not satisfied, to apply to this Court for an opportunity for a similar review here. **>>** ***[see Appendix "28 USC § 2111"]***

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[1] This Court can access the merit of the evidence through PDF or 'PACER; restating SCOCCA's Appellate '***Reply Brief***' (i.e. *Table of Contents)* and the, District Court, '***Rule 60(b)Motion***'*(Docket #43)* would just be repetitious. Furthermore and ironically, a copy of both are included in Cendant's '***Supplemental Appendix***' (*appellate court*) granted on Motion, we must assume reviewed by the Appellate panel. Although it seems significantly plausible that it too, was omitted. In any event, it makes clear the importance of the '***Newly Found Evidence***' and further describes the issues at hand in both Courts. (see Cendant's '***Supplemental Appendix' (SA A046-A097)***and **for a detailed breakdown of each alphabetical bullet-point(in RED) of the *District Court 8 Nov 2004 order,* proved false)**

The single circuit Judge has made such a circuit panel review impossible. Instead of pursuing this plain remedy for injustice and securing by an appellate court a review of this very serious question on the merits, the clerk sought by applying **28 USC § 2112(b)** *(Record on review and enforcement of agency orders)* filed this 'Motion to review order on October 26th 2006' as if from SCOCCA; furthermore, to a single circuit judge of coordinate authority for such a Motion on the ground that the single judge was without jurisdiction to make the decision he did. This raised the sole issue whether the single judge had authority to decide the question alone, if it was denied, not whether he had rightly decided it. ***FRAP Rule 27(c)***

Relying on a 'Pro Se' Appellant to overlook this manifest error and any attempt for a writ of certiorari in the Supreme-Court fruitless; the authoring Judge and his clerks thought that if they could secure a decision from a single circuit judge denying the '*Motion for Rehearing out-of-time*', no further action would lie from his decision and that thus resort to the Appellate Court panel could be avoided. **>>** ***[see Appendix "IOP 10.8.1"]***

This bogus Motion for review filed (not by SCOCCA) designed to placate, was denied by the authoring Judge in an attempt to quiet the opportunity for a review of the case on its merits in the Circuit Court of Appeals and secure finality of the mandate through the act of a single judge. In conjunction and before this bogus review was denied, SCOCCA filed (received via FedEx by the Clerk of the Court) a ***'Motion to stay this bogus Motion'*** and a ***'Motion to stay mandate for writ of certiorari in the Supreme-Court'***, but 'apparently negligently omitted' from the docket record because neither motion was entered by the clerk. ***(see 28a USC 45(b), 25(a), LAR 111.8) >>[also see Appendix "FRAP Rule 27(c)"*** and ***Appendix "IOP 10.8.2"]***

Without panel review, denial of a petition for rehearing would allow a single Judge to effect the finality of an appeal. Such as in this case, when evidence is consistently negligently omitted that affect the substantial rights of the parties which forcefully lends itself to abuse of discretion, the Appellate-Court, following the precept of FRAP 35(a), LRAP 35.4 and IOP **9.3.1** may order a Rehearing en banc necessary, to secure or **maintain uniformity of its decisions**. The

rule provides that each court develop internal court procedures for disposing of such petitions because of the discretionary nature of the rehearing en banc. ***(see FRAP 35(f)) (see also IOP A(2) and 9.5.1)***

A rule permitting a single judge to submit for judgment of denial is "inconsistent" (or not "consistent") with Rule 40's 14-day filing limit; and the question of when a '*Motion for Rehearing out-of-time'* may be denied by a single judge does not present a case "not provided for" by Rule 40; and Rule 40 **is the "controlling law" governing this question**.

The structure of IOP **10.8.1 indicates that** a single Judge **is limited.** (***FRAP Rule 27***(c) It does not set forth a principle of interpretation to use in construing a principle of law superseding clear rules that do not achieve the stated objectives and It does not, that is to say, provide that rules shall be construed to mean something other than what they plainly say –. Certainly, review of this order for correctness will only be achieved by panel review which is what this IOP **10.8.1** would require; and not as to whether the Court would have denied this '*Motion for Rehearing out-of-time*' had a single senior Judge followed the rule as written. The case law of this Court does not establish any "inherent power" for a single judge to act in contravention of applicable Rules. ***In Gaca v. United States, 411 U.S. 618, 36 L. Ed. 2d 541, 93 S. Ct. 2156 (1973)*** (*per curiam*), which reinstated an appeal that had been dismissed for want of timely prosecution, there was no suggestion that reinstatement was contrary to any statute or rule of procedure. And in ***United States v. Nobles, 422 U.S. 225, 45 L. Ed. 2d 141, 95 S. Ct. 2160 (1975),*** which approved exercise of a District Court's inherent authority to order the disclosure of certain witness statements, this Court felt it necessary to make sure that such exercise did not conflict with **FRCrP 16.**

This case does not involve willful non-compliance, rather, previously addressed alternative to problems with correspondence contributing to out-of-time, which the 3rd Circuit-Court traditionally forgives, and well within rule 40 limits.

There is a "power 'inherent in every court of justice so long as it retains control of the subject matter and of the parties, to correct that which has been wrongfully done by virtue of its process.'" ***United***

States v. Morgan, 307 U.S. at 197. Two Courts of Appeals, when confronted with a similar issue, reached different results. [2] *and* [3]

The reasoning in ***Sanger*** applies in relevance to a variety of situations in this case. (i.e. situations include, but not limited to: the District Court repeated failure to give notice**(never)**, (*contrary to docket entries*) but, secondary to the impact of the denying access to ECF and PACER for docket information *(3yrs ago, 'pro se' needed approval, Judge denied);* and the District Court granted Cendant relief '***to reply in further support*** of its motion to dismiss pursuant rule 12(b)(6)' and ***denied SCOCCA to respond*** before judgment, but, secondary to the impact of the omission of the '***Newly Found Evidence***'; and a single Senior Circuit-Court Judge that defies the orders of the Court, but, secondary to dismissing an appeal without a three-Judge panel review; **"There is no doctrine to doctrine"** *(the Honorable Chief Justice Scallia)*

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[2] "In ***United States v. 1982 Sanger 24' Spectra Boat***, a forfeiture proceeding, the district court, contrary to its local rules, struck petitioners' claims and their answer to the verified complaint without allowing petitioners to reply to the Government's motion. 738 F. 2d 1043 (1984). In considering whether the district court committed an act upon which a Rule 60(b) motion can be based, the Ninth Circuit held that "although **a failure to follow a local rule** may not rise to the level of a due process violation, nonetheless when the effect is conclusively to dispose of a claim, failure to provide notice is a serious procedural irregularity which in this case justifies relief from judgment under Rule 60(b)." ***Sanger, 738 F. 2d at 1046***. The Ninth Circuit concluded that the claimants were entitled to relief from judgment pursuant to 60(b)(4)."

[3] "The Seventh Circuit, however, issued a somewhat contrary ruling in **Blaney v. West, 209 F.3d 1027 (7th Cir. 2000)**. In Blaney, the District Court dismissed the plaintiff's case sua sponte because of a service defect. While the plaintiff attempted to correct the problem by refiling and reserving the suit, the second suit was also dismissed because the statute of limitation had expired. The plaintiff filed a Rule 60(b)(4) motion for the first suit, claiming the judgment was void because he had not received notice before the court entered the dismissal. Id. The Seventh Circuit concluded that the plaintiff's **failure to receive notice** before the judgment entry did not rise to the level of a violation of due process because the plaintiff received notice from the judgment itself and had ample opportunity to move for reconsideration of the judgment. **Id. at 1032**."

Discretion is Reasonable Consideration of circumstances, Reasonably Considered.

Each court of appeals acting by a majority of its judges in regular active service may, make and amend rules governing its practice and must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended. ***FRAP Rule 47 (a)(1) and 28 U.S.C., § 219*** A court of appeals may regulate practice in a particular case in any manner consistent with federal law, FRAP rules, and local rules of the circuit **unless the sanction or other disadvantage imposed, promotes noncompliance.**

Pursuant to ***Rule 25(a)(2)(D),*** a "Petition for Rehearing" and "Petition for Rehearing out-of-time" by electronic transmission has been established by the 3rd Circuit Court, nevertheless, the Clerk of the Court failed to accept, SCOCCA's timely electronic Petition for Rehearing and his timely hardcopy, but instead issued a noncompliance letter for out-of-time.

Rule 40 clearly instructs filing "within 14 days after the entry of order". Just as clearly, Rule 40 includes a Motion to file petition for rehearing out-of-time once 14 days have run. A rule like 40 is not framed to resist ad hoc relaxation. A time line must be drawn at some point, and it is not unreasonable to extend it out rather than deny a Petition for Rehearing without review of the suppressed evidence, that in itself creates manifest injustice. "A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a non-willful failure to comply with the requirement."

Any, one Single Judge's authority is limited to non-terminal decisions for an appeal. To deny this *Motion for Rehearing out-of-time* allows an Appellate-Court decision to stand(end) with errors. The Clerk's office infringement to suppress evidence, whether deliberate or not, is not at issue for this discussion; but further endorsement by this tainted decision, is.

To reverse a panel decision unsupported by evidence is not contingent on the filing of a timely petition for rehearing by the appellant. The question in this case, therefore, it is not whether **Rule**

40 of the Federal Rules of Appellate Procedure *authorizes* a single judge to deny an untimely Petition For Rehearing of judgment. Rather, the question is whether that Rule *withdraws* the court's pre-existing authority to refrain from entering judgment for correction of "apparently negligently omitted" evidence, to continue unresolved.

Now, the Appellate Court twice overlooked this **critically important** ***'Newly Found Evidence'*** that could affect the outcome of what is, and has always been, the major issue in the case. To consider the case without reference to it shows not only that the court's initial decision is wrong but also if the decision stands, will lead to a serious miscarriage of justice.

This Court may commendably describe what occurred as follows: A "dedicated judge discovered what he believed to have been an error, and the Court of Appeals' willingness to correct a decision that it perceived to have been mistaken acted accordingly." The Appellate Court, however, does not decide this case in a manner consistent with that observation. A somewhat more comprehensive account of the nature of the "error"--of the matter at stake, of the importance of the documents, of the mystery of its late appearance, of the potential for a miscarriage of justice--should help make apparent the difficult circumstance the panel faced. It will not explain why there was "abuse" of discretion in the panel's effort not to "correct a decision that it perceived to have been mistaken". ***Only a review of the 'Reply Brief' and the 'Newly Found Evidence' will determine if the substantive rights of SCOCCA were at risk.*** At that point a full briefing on the merits may not be required for this Court to put this case back to before the erroneous dismissal, over 3 years ago.

We freely concede that the *'Motion to stay the bogus review of order for writ of certiorari'* may not be employed as an anticipatory writ of error, such as was discountenanced in ***Henry v. Henkel, 235 U.S. 219; Rumely v. McCarthy, 250 U.S. 283,*** and similar cases. But generally, the rule of procedure for which such cases stand is quite beside the right to attack by writ for lack of jurisdiction or excess of power. Even if the only question that this court on writ of certiorari can look into is one of jurisdiction, broadly considered, the cases show that the court may look into the facts upon which the District Court dismissal was based, to the extent that they affect the opinion of the Appellate-Court for correctness of the District Court order.

The opinion for correctness of the District Court order rendered by the Appellate-Court was final and conclusive **when the single Judge denied the Petition for Rehearing,** unless reversed on Legal writ of error, where no appeal is available as a matter of right.

The Appellate-Court had jurisdiction of the person of the offender and of the offense, and any sentence imposed was within its power, both inherent and as confirmed by the statute.

If the authority conferred by panel review, clearly embraced the offense, No issue of jurisdiction is left. This petitioner urged certain issues of law and fact as affecting the jurisdiction, but every one of these was open to review on appeal to this Court, as the denial of the Petition for Rehearing out-of-time was unquestionably a final decision. Assuming that the Supreme-Court's determination of every one of these questions was erroneous, they would still be within the scope of writ of certiorari; Since this single judge "***has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power***" and it would be incompatible with Circuit-Courts in general to adopt or admonish this behavior into a new '*principles model*'.

While it may be admitted that to some extent a contempt case is sui generis, nevertheless it is governed by the general rules applicable to appeals and writs of error.

Very possibly some of the cases confuse the principles that govern jurisdiction with those that govern merits. See **Fauntleroy v. Lum, 210 U.S. 230, 235.** But this may be treated as a question of jurisdiction. The statute puts it as a matter of power, "The said courts shall have power . . . to punish . . . contempts of their authority: Provided, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice," etc. Jud. Code, § 268. These words should be taken literally and that we do not need a better illustration of the need to treat them as jurisdictional and to confine the jurisdiction very narrowly than the present case. For we must not confound the power to punish this kind of contempts with the power to overcome and punish disobedience or defiance of the orders of a court, although unfortunately both are

called by the same name. That of course a court may and should use as fully as needed. One final note: ***28 U. S. C. § 351*** *is insufficient* --- here the conduct is ***simple defiance*** of the Circuit-Court authority, **(continuing independently)** *where as the District Court amount to 'only' abuse of discretion.*

At what point or at what cost does integrity step up and take notice. This case has been plagued with inappropriate behavior, from refusing discovery to Court docket secrecy to dismissing the appeal by omissions of evidence and erroneous non-compliance violations supported by defiance of the 3rd Circuit-Court orders together with breaking '***traditional (untimely relief) practices***' of the Court. The manipulation of the docket is beyond coincidence, always to the disadvantage of SCOCCA. As stated before, ***"the sides need not be equal but the playing field must be"*** This experience has been both eye opening and heartfelt. Eventually, SCOCCA will go away, but these practices lives on. [4]

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[4] **Justice** is the ideal, morally correct state of things and persons, whatever that contested ideal may turn out to mean. For many, justice is overwhelmingly important: "Justice is the first virtue of social institutions, as truth is of systems of thought." For many, it has not been achieved: "We do not live in a just world." It is not clear, however, what justice and injustice demand of us. We are in the difficult position of thinking that justice is vital, but of not being certain how to distinguish justice from injustice in our characters, institutions or actions, or in the world as a whole.

What exactly justice is, and what it demands of individuals and societies, are among the oldest and most contested of philosophical questions. For example, the proper distribution of wealth in society — should it be equal? meritocratic? according to status? — has been fiercely debated for at least the last 2,500 years.

We might picture justice as a **virtue** — a property of people, and only derivatively of their actions and the institutions they create — or as a property of *actions* or *institutions*, and only derivatively of the people who bring them about. The source of justice may be thought to be harmony, divine command, natural law, or human creation, or it may be thought to be subordinate to a more central ethical standard. Ideals of justice must be put into practice by institutions, which raise their own questions of legitimacy, procedure, codification and interpretation. . **"Justice is a virtue of righteousness; righteousness is unselfishness in our orientation relative to the world around us (but, not thru ours eyes)."**

It is essential, for this Court to understand clearly the regularity of prejudices that have effected this case. The Honorable Justices of the Supreme-Court probably view most documents online at the very least PDF files. It is, convenient, portable and easily accessible. In today's world of online access the impact of eliminating SCOCCA access to the Court docket and allowing only Cendant's documents viewable becomes increasingly significant and apparently clear that any ability to alter the '***Official Court Docket Record***' will have devastating results.

The Supreme Court Stands as the Last Resort for Review of a 'Petition For Rehearing Out-Of-Time' & 'Review Of Order'

Another question before Supreme Court is **not** whether you, as Supreme Court Justices, would have come to the same conclusions, as did the panel of the Court of Appeals. It is whether the three members of the appellate panel abused their discretion in denying the 'Motion *for Rehearing out-of-time'* without review of the 'Petition for Rehearing' and '***Reply Brief***'.

The Supreme Court stands as the last resort in adjudication of the issues litigated. The petitioner was entitled to have this portion of the record included, and **that the Circuit Court of Appeals had jurisdiction**, but was administratively eliminated. This Court has to entertain this writ for cert as the 'Circuit Police', not for the purpose of passing on the merits, **but to direct the reformation/correction of the Judical System.**" ***See Chandler v. Judicial Council, 382 U.S. 1003, 1004 (1966) and*** "Basic to the operation of the judicial system is the principle that a court speaks through its judgments and orders." **Murdaugh Volkswagen, Inc. v. First National Bank of South Carolina, 741 F.2d 41, 44 (CA4 1984)**. Without a formal docket entry neither the parties nor this Court had, or have, any way to know whether the court had reviewed the evidence or simply made a clerical mistake. Cf. **Ballard v. Comm'r, 544 U.S. 544 U.S. 40, 161 L. Ed. 2d 227, 125 S. Ct. 1270 (2005)** . For this discussion and the expectancy of any claims that "the failure to enter these documents was likely due to a simple clerical error on the part of the Clerk's office" with the intent to divert the blame or undermine the magnitude of this behavior; the record lends no support to this speculation.

The review of the '*Motion for Rehearing out-of-time*' and the *review of orde*r, would have permitted the panel to explain why these documents failed to be recorded and possibly to explore the matter of prejudice. The court's "opportunity to consider" the newly cited evidence at the rehearing stage is yet another factor supporting the abuse-of-discretion determination. Again, it fails to explain any willingness to apply a "presumption of regularity" to the panel's actions but not to the Clerk's

Still, the '***Reply Brief***' implied that the '***Newly Found Evidence***' documents were part of the original Motion in the District Court and precisely what issues were important. The '**Petition for Rehearing**' implied that the documents were part of the original appeal and on the ground that these documents were *not* in the record, again offering a genuine "opportunity to consider" this evidence.

"But this [Supreme Court] court is compelled, as all courts are, to receive evidence *dehors* the record affecting their proceeding in a case before them on error or appeal." 113 U.S., at 225. See also *Wood-paper Co.* v. Heft, 8 Wall. 333.

Under these circumstances, the Appellate-Court's opportunity to consider these documents at the rehearing stage should militate in favor of finding an abuse of discretion. *"we should encourage, rather than discourage, an appellate panel, when it learns that it has made a serious mistake, to take advantage of an opportunity to correct it, rather than to ignore the problem"*. Even at the risk of 'cracking some eggs', the integrity of the Judicial System survives because of 'the overseers' resistance to *starting* with concession, then another compromise, to another compromise…' Lesson learned by example.

Abuse Of Discretion On Both Ends; (i.e. Not Only What Was Done But To The *Degree Of Insurgency*)

Pursuant to Rule 27(**c**). The 3rd Circuit-Court of Appeals made it clear in **IOP 10.1** that only the court may act on any *Motion for rehearing out-of-time* denied by the authoring Judge and just as clear, if this was to happen by mistake or otherwise, the order by this single Judge will be reviewed by the Circuit-Court Panel; certainly before any mandate is issued. **Further, and as recently as this year,**

the 3rd Circuit-Court of Appeals has reaffirmed the granting of relief for out-of-time within 90 days as '*their traditional practice* '.

> "We generally consider a motion to file a petition for rehearing "out of time" reasonable when the request is made within the ninety day period for filing a petition for writ of certiorari. Likewise, we generally consider a delay unreasonable when the motion is made after the ninety-day period has expired. Nonetheless, as is **our traditional practice**, we deemed his petition as a "motion to file petition for rehearing out of time", and granted it." ***United States v. Wall, Nos. 04-2280, 05-2019 3d cit 2006***

Thus, the authoring Judge knew, or certainly should have known that the panel had not reviewed the denial of a 'Motion for Rehearing out-of-time'; it follows that until panel review, the clerk can not issue the mandate; and as experienced circuit Judges, they also knew, or certainly should have known, that a proceeding is technically over if the clerk issued a mandate. And if concerned by the mistake (and some mistakes in such matters is not uncommon), they could have asked the Circuit Clerk why the mandate had been issued. If necessary, they could have filed a motion seeking that information or seeking the mandate's immediate recall. For another thing, since every docket entry is a clerical duty, the clerk may have thought the order had been reviewed in one day's time. Once we apply a presumption of regularity to the panel's actions, we must assume that the failure to recall the mandate, erroneous and omitted filings was likely due to a simple clerical error.

Given the District Court and Circuit Court's likely knowledge of the circumstance concerning ineffective correspondence at SCOCCA's present location (outside of the United States) that creates the potential for delays, the existence of avenues for resolving any uncertainty, and the likelihood of prejudice without pragmatic allowances, the lack of notice and denying an alternative method for correspondence **does** significantly advance this Court's "abuse of discretion" finding.

Indeed, if Supreme Court believes that the Court of Appeals could have issued a revised opinion correcting its earlier judgment, ***if only it had granted a alternative method for correspondence and if it***

had reviewed the appeal in its entirety and if documents had not been 'apparently negligently omitted' and had the panel reviewed the Petition for Rehearing out-of-time and had a single senior Judge stayed within his limits, the sanctions this Court may now impose--outright reversal of the District Court's dismissal **(from 3yrs ago)**--would not be needed. (see ***United States v. Wall***, Nos. 05-2019)

This Court can grant summary judgment for District Court---if an examination of the record reveals that the error of the Court of Appeals *did* affect substantive rights of the parties. [5] *and* [6]

In the United States, certiorari is the writ that an Supreme-Court issues to a lower court in order **To Review Its Judgment For Legal Error,** where no appeal is available as a matter of right. This case is now here on a petition for certiorari. SCOCCA has presented reasons why the decision below would merit an exercise of this Court's discretionary jurisdiction. Moreover, in § 1292(b) appeals, it is still the correctness of the order that is the question on appeal,

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5 "It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. "**The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits**." **Conley v. Gibson, 355 U.S. 41, 48.** The Rules themselves provide that they are to be construed "to secure the just, speedy, and inexpensive determination of every action". Rule 1

6 **"Cahill v. New York, N. H. & H. R. Co., No. 436,** We have never held that in every instance where the Court of Appeals has failed to decide a point, we must remand the cause to that Court. Such a rigid rule would be most undesirable and would bring about interminable delays with most unjust results. In **Delk v. St. Louis & S. F. R. Co., 220 U.S. 580,** a suit for injuries under the Safety Appliance Act, this Court, after reversing the Court of Appeals on one question, went on to decide a second question which the Court of Appeals had expressly left undecided. Mr. Justice Harlan, speaking for the Court, said: "As the case is here upon certiorari to review the judgment of the Circuit Court of Appeals, **this court has the entire record before it with the power to review the action of that court as well as direct such disposition of the case as that court might have done** . . . ." **220 U.S., at 588.** See also Harriman v. Northern Securities Co.,197 U.S. 244, 287; *Lutcher & Moore Lumber Co.* v. Knight,217 U.S. 257,267-68"

ignoring the point that it is not limited to the abstract legal question certified. ***46(c)*** provides that, **>>** ***[see Appendix "28 USC sec. 46(c)"]***

"Miscarriage Of Justice" And Circuit Judge And Rehearing

The authoring Judge eliminated the Circuit-Court panel review of this '***Newly Found Evidence***' and '***Reply Brief***' by denying the *Motion for rehearing out-of-time* and declining to reach the merits of the Petition that could satisfy the threshold of "substantial claims" required. **Sawyer v. Whitley, 505 U.S. 333, 120 L. Ed. 2d 269, 112 S. Ct. 2514 (1992).** Under *Sawyer*, the petitioner must show "by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found the petitioner" guilty. Clearly, the *Sawyer* standard provides adequate protection against the kind of miscarriage of justice that would result from the exclusion of substantial evidence to support these claims. The Rules themselves provide that they are to be construed "to secure the just, speedy, and inexpensive determination of every action." ***(See Rule 1) Conley v. Gibson, 355 U.S. 41, 48.***

We may properly view negligently omitting evidence and the defiance of Circuit-Court IOP Rules with great suspicion and treat with great delicacy especially when these issues are consistent with the District Court. They upset society's interest in the finality of judgments, are very often coercive and initiated for suspect motives, and most often serves to undermine confidence in the integrity and accuracy of our judicial system rather than merely harmless mistakes. For these reasons, disappearance and reappearance of Court document evidence and intentionally eliminating panel review, typically will justify the granting of this writ of certiorari where the reviewing honorable justices after analyzing the circumstances are satisfied that it is true and that it will "render probable a different verdict." *See, e. g.*, ***Brown v. State, 381 So. 2d 690, 692-693 (Fla. 1980).***

The court may, and it is its duty to protect the administration of justice by punishment of the offender for contempt. ***Craig v. Hecht, No. 82. 263 U.S. 255;44 S.Ct. 103;68 L.Ed. 293; 1923 U.S.***

It is of primary importance that the right freely to comment on and criticize the action, opinions and judgments of courts and judges should be preserved inviolate; but it is also essential that the court of

appeals should not be impeded in the conduct of judicial business by this disregard for orders of the court (contempt) having the direct tendency and effect of obstructing the enforcement of orders and judgments, or of impairing the justice and impartiality of verdicts.

The remedy of the appellate Court is by action to review the order of October 26th 2006. If, however, the 'order' and the 'review of order'(by Motion ??) is intended and calculated to obstruct and embarrass the court in a pending proceeding in the matter of the rendition of an impartial verdict, or in the carrying out of its orders and judgment, the court may, and it is its duty to protect the administration of justice by punishment of the offender for contempt.

The federal statute concerning contempts as construed by this Court in prior cases vests in the Appellate Court the jurisdiction to decide whether an order entered by a single circuit judge **against the orders of the Circuit Court is obstructive or a harmless mistake only**. The delicacy there is in the circuit panel deciding whether an attack upon its Internal Operating Procedures is mere defiance or real obstruction, and the possibility that impulse may incline its view to confidential/internal vindication, are manifest. Defiance of orders can justify dismissal with prejudice, and admonishing parties who "treat scheduling orders as optional and [who] conduct trial preparations at their own convenience" ***Young v. Gordon,330F3d 76, 81(1st Cir. 2003)***.

As Al Sharpton—who says 10,000 things a year and is right at least twice—pointed out Monday December 4th 2006, contagious shooting as an explanation for this week's tragedy is "even more frightening" than malice, since it implies that such incidents will recur. The most famous invocation of contagion in law enforcement, delivered eight decades ago by Justice Louis Brandeis, became a centerpiece of the 1966 *Miranda* case. "Crime is contagious," Brandeis wrote. "If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself;

it invites anarchy." **(See *Olmstead v. United States June 4, 1928 certiorari ninth Circuit)*** [7]

"The Constitution/Bill of Rights is the *modern day Bible*, ***the word of God***"; where "laws are written with a *strong hand* but administered with a *soft heart*", "the Supreme-Court consummately sui generis, *stamu contra malum* for the ***spiritus mundi***". ----- *(Dr. Richard A Scocca Jr, December 24th 2006).*

Dated: ***13 March 2007***

RA Scocca Jr

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7 "We must never forget," said Mr. Chief Justice Marshall in *McCulloch v. Maryland,* 4 Wheat. 316, 407, "that it is a constitution we are expounding." Since then, this Court has repeatedly sustained the exercise of power by Congress, under various clauses of that instrument, over objects of which the Fathers could not have dreamed. *See Pensacola Telegraph Co. v. Western Union Telegraph Co.,* **96 U.S. 1**, 9; *Northern Pacific Ry. Co. v. North Dakota,* **250 U.S. 135**; *Dakota Central Telephone Co. v. South Dakota,* **250 U.S. 163**; *Brooks v. United States,* **267 U.S. 432**. We have likewise held that general limitations on the powers of Government, like those embodied in the due process clauses of the Fifth and **Fourteenth Amendments**, do not forbid the United States or the States from meeting modern conditions by regulations which, "a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive." *Village of Euclid v. Ambler Realty Co.,* **272 U.S. 365**, 387; *Buck v. Bell,* **274 U.S. 200**. Clauses guaranteeing to the individual protection against specific abuses of power must have a similar capacity of adaptation to a changing world. It was with reference to such a clause that this Court said, in *Weems v. United States,* **217 U.S. 349**, 373:

Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions **[p473]** and purposes. Therefore, a principle, to be vital, must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall "designed to approach immortality as nearly as human institutions can approach it." The future is their care, and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be. Under any other rule, a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality."

28 USC § 1746 Unsworn Declarations Under Penalty Of Perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement**, oath, or affidavit**, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) **If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (March 13th, 2007)**

(RA Scocca Jr)

As applied under 18 USC §1621. Perjury.

Dr. RICHARD A. SCOCCA JR
scocca_richard@yahoo.com

Opinion By Appellate Court On 25 September 2006

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 06-2477

RICHARD A. SCOCCA, JR.
Appellant
v.
CENDANT MORTGAGE CORPORATION
f/k/a PHH US MORTGAGE CORPORATION

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 04-cv-0704)
District Judge: Honorable Stewart Dalzell

Submitted Under Third Circuit LAR 34.1(a)
September 21, 2006

BEFORE:
SLOVITER, SMITH and VAN ANTWERPEN, CIRCUIT JUDGES
(Filed: **September 25, 2006**)

OPINION

PER CURIAM

Richard A. Scocca, Jr. appeals pro se from an order of the United States District Court for the Eastern District of Pennsylvania denying as frivolous his motion filed pursuant to Fed. R. Civ. P. 60(b) and his motion for recusal. For the reasons that follow, ***we will affirm***.

I.

The parties are familiar with the facts, so we will only briefly revisit them here. In June 2001, rental property owned by Scocca, on which Cendant Mortgage Corporation ("Cendant") held a mortgage, was sold at a judicial tax sale after the local tax collector failed to record Cendant's timely payment of school taxes. Cendant later advised Scocca that it had negotiated with the purchaser to restore ownership of the property to Scocca, and the tax sale was set aside by

a "Stipulation and Agreement" entered in the Court of Common Pleas of Delaware County, Pennsylvania.

In February 2004, Scocca filed a complaint in the District Court alleging, inter alia, that Cendant breached its contractual and fiduciary duties, committed fraud, and violated the Real Estate Settlement Procedures Act ("RESPA"). The District Court (Judge Dalzell) granted Cendant's motion to dismiss on November 8, 2004. Scocca did not appeal. Instead, he filed a motion for reconsideration, which the District Court denied on December 23, 2004. Scocca filed a second motion for reconsideration on March 16, 2005, again challenging the order granting Cendant's motion to dismiss. On April 20, 2005, the District Court denied this motion because it was untimely and because Scocca did not satisfy any of the requirements for reconsideration. See Messina v. Krakower, 439 F.3d 755, 758-59 (3d Cir. 2006).

Almost one year later, on April 12, 2006, **Scocca** filed a motion pursuant to Fed. R. Civ. P. 60(b), **claiming that** ***he "was unable to move to file a timely appeal"*** of the District Court's two orders denying reconsideration because he "just realized" that he did not receive any notice of those orders. He simultaneously moved for recusal of Judge Dalzell, alleging bias. On April 13, 2006, the District Court denied both motions as frivolous. Scocca appealed. We have appellate jurisdiction under 28 U.S.C. § 1291.

II.

An appeal from an order denying a motion for relief from a judgment under Rule 60(b) **brings up only the correctness of the order** denying that motion, not the underlying order. See Torres v. Chater, 125 F.3d 166, 168 (3d Cir. 1997). We review the District Court's denial of a Rule 60(b) motion for an abuse of discretion. See Coltec Indus. v. Hobgood, 280 F.3d 262, 269 (3d Cir. 2002). We can affirm on any basis appearing in the record. See Bernitsky v. United States, 620 F.2d 948, 950 (3d Cir. 1980).

In his Rule 60(b) motion, ***Scocca sought to extend the time for appealing from the denial of his two motions for reconsideration,*** arguing that he did not receive timely notice of those orders. However, "[l]ack of notice of the entry by the clerk does not

affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure." Fed. R. Civ. P. 77(d). ***Relying on that rule, we have held that where the sole basis for a Rule 60(b) motion is the lack of notice of the entry of an order,*** the motion must meet the time limitations of Rule 4(a). See Hall v. Community Mental Health Center, 772 F.2d 42, 44 (3d Cir. 1985) (stating that because the provisions of Rule 4(a) are "more specific to the appellate process than Rule 60(b)," they control the timing of the filing of appeals); West v. Keve, 721 F.2d 91, 96 (3d Cir. 1983) (holding that "to allow a party to rely on Rule 60(b) as an alternative to the time constraints of Rule 4(a) would have the substantive effect of nullifying the provisions of Rule 4(a)(5)."). Pursuant to Rule 4(a)(5), a district court may extend the time for filing a notice of appeal for excusable neglect or good cause, upon a motion filed no later than 30 days after the expiration of the time prescribed by Rule 4(a). See Fed. R. App. P. 4(a)(5). Rule 4(a)(6) permits a district court to reopen the time for filing where the moving party did not receive notice of the entry of the judgment sought to be appealed, if the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier. See Fed. R. App. P. 4(a)(6).

The orders denying Scocca's *motions* for reconsideration were entered on *December 23*, 2004, *and April 20*, 2005. *Scocca had until* January 24, 2005, *and May 20, 2005*, respectively, *to file timely notices of appeal.* See Fed. R. App. P. 4(a)(1)(A) (providing *30-day period* within which to appeal final orders in civil actions to which the United States is not party). Scocca filed *his Rule 60(b)* motion on *April 12, 2006*, well outside the periods for filing a timely *Rule 4(a)(5)* or *Rule 4(a)(6)* motion. Accordingly, we conclude that the District Court did not abuse its discretion in denying Scocca's Rule 60(b) motion.

III.

Scocca also appeals the District Court's order denying his motion for recusal, which was based upon an allegation that Judge Dalzell was biased against Scocca in this case and against pro se litigants in general. Adverse legal rulings are not proof of prejudice or bias and almost never a basis for recusal. See Liteky v. United States,

510 U.S. 540, 555 (1994). We find nothing in the record that suggests "a deep-seated favoritism or antagonism" by Judge Dalzell that would preclude fair judgment. Id. Nor do we perceive any facts from which a reasonable person would conclude that Judge Dalzell's impartiality might reasonably be questioned. See 28 U.S.C. 455(a); Edelstein v. Wilentz, 812 F.2d 128 (3d Cir. 1987). We thus have little difficulty concluding that the District Court did not abuse its discretion in denying Scocca's recusal motion.

IV.

For the foregoing reasons, **we will affirm** the judgment of the District Court.

Order on 26 October 2006 Petition for Rehearing Out-Of-Time

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

October 25. 2006

No. 06-2477

Richard A. Scocca Jr., Appellant

vs.

Cendant Mortgage Corporation, f/k/a PHH US Mortgage Corporation
(Eastern District of Pennsylvania **Civil No. 04-cv-00704)**

PRESENT: Van ANTWERPEN, Circuit Judge.

Motion by Appellant for leave to file petition for rehearing out of time.

Opinion and Judgment entered 9/25/06 Carmella L. Wells
Case Manager

ORDER

The foregoing motion by Appellant for leave to file petition for **Rehearing Out Of Time** is **denied**.

By the Court,
/s/ Franklin S. Van Antwerpen
Circuit Judge

Dated: October 26, 2006

CLW/CH/cc: Richard A. Scocca Jr.
Jennifer A.L. Battle, Fsq.
Carl a. Solano, Esq.

Order District Court Motion for Reconcideration rule 60(b)(2)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD A. SCOCCA, JR. : CIVIL ACTION
v. :
CENDANT MORTGAGE CORP. : NO. 04-704

ORDER

AND NOW, this **13th day of April, 2006**, **upon consideration of** Scocca's pro se ***motion for the recusal*** of this Court (docket entry # 42) and his pro se motion for relief under Fed. R. Civ. P. 60(b) (docket entry # 43), and the Court finding that **this is not a case in which this Court's "impartiality might reasonably be questioned,"** 28 U.S.C. § 455(a); see also Liteky v.United States, 510 U.S. 540, 555 (1994) (noting that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"), **and the Court also finding that Plaintiff predicates his other motion at least in part on *"a conspiracy between the Court and Cendant,"* see Pl.'s Mem., at 2,**

it is hereby ORDERED that **both motions** are **DENIED** AS FRIVOLOUS.

BY THE COURT:
/s/ Stewart Dalzell, J.

[1] As we entered judgment against Scocca on November 2004 **and had not heard from him in over a year,** ***we were curious what inspired the instant motions.*** A review of the **docket sheet reveals** that, on March 16, 2006, the Clerk entered unopposed taxation of **costs** against him in the **amount of *595.44***.

Order District Court – 'Motion to Dismiss Rule 12(b)(6)'

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD A. SCOCCA, JR. : CIVIL ACTION

ORDER AND NOW, this **8th day of November, 2004**, upon consideration of defendant's motion to dismiss the amended complaint (docket entry # 24), plaintiff's response (docket entry# 25), **defendant's motion for leave to file a reply and the attached reply itself** (docket entry # 26), and the Court finding:

(a) On August 19, 2004, plaintiff, who is unrepresented, filed an amended complaint with six counts;

(b) On September 9, 2004, defendant filed a Fed. R.Civ. P. 12(b)(6) motion to dismiss, and we now consider each count separately;

(c) While plaintiff's entire amended complaint is no model of clarity, it is most difficult for us to decipher the first count;

(d) While plaintiff appears to allege that defendant breached some duty, it is unclear whether he grounds it in tort law, contract law, Housing and Urban Development ("HUD") rules, or the federal Real Estate Settlement Procedures Act ("RESPA"***);(see [SA A047-52] SUPPLEMENTAL APPENDIX 3rd cir.Appellate Docket 07/14/07) on behalf of Appellee Cendant Mtg)***

(e) To the extent that count one is a tort claim for negligence or breach of fiduciary duty, Pennsylvania's two-year statute-of-frauds bars it, see 42 Pa.C.S.A. § 5524(7); Robinsonv. Johnson, 313 F.3d 128, 135 (3d Cir. 2002), cert. denied, 124 S. Ct. 48 (2003);[1]***"); (see [SA A052-65]***

(f) To the extent that count one is a breach-of contract claim, under Pennsylvania law, to plead a cause of action for breach of contract, one must point to "a breach of a duty imposed by the contract," Williams v. Nationwide Mut. Ins.Co., 750 A.2d 881, 884 (Pa. Super. 2000); see also CoreStates Bank, N.A. v. Cutillo, 753 A.2d 1053, 1058 (Pa. Super. 1999);***(see [SA A065-66]***

[1] Plaintiff alleges that, on or about June 13, 2001, the property was sold at a judicial tax sale, and defendant's alleged failure to service plaintiff's mortgage induced that sale. Am.Compl. at ¶¶ 52-54. Thus, the facts underlying this action occurred in the months leading up to June 2001. The limitations period thus

commenced--at the latest--on June 13, 2001.Consequently, plaintiff's tort claims expired on June 13, 2003, even under Pennsylvania's "discovery rule". See Cochran v. GAFCorp., 666 A.2d 245, 248-49 (1995).

(g) Not only does plaintiff fail to allege that defendant violated paragraph 2 by neglecting to pay taxes promptly but plaintiff's own exhibit demonstrates that defendant satisfied this duty by paying promptly, see Am. Compl., Ex. Y; ***");(see [SA A066-68]***

(h) Furthermore, although plaintiff alleges that defendant had a "responsibility to prevent the Subject Property from the judicial tax sale of June 13, 2001," a "responsibility to protect the Security Instrument from being sold at the judicial tax sale of June 13, 2001," and a "responsibility to the Plaintiff to protect the interest of the Property named in the Mortgage Contract," Am. Compl. at ¶¶ 52, 53, 54, plaintiff" points to no breach of a duty imposed by the contract," Williams, 750 A.2d at 884; ***(see [SA A068]***

(i) To the extent that count one alleges a violation of unspecified HUD rules, the Mortgage Agreement never incorporated them, and there is no private right of action against a mortgagee based on alleged violations of them, see Roberts v. Cameron-Brown Co., 556 F.2d 356, 360-61 (5th Cir.1977); United States v. Thomas, 627 F.Supp. 129, 136 (N.D.Ill.1985); ***(see [SA A068-70]***

(j) Even if HUD rules did apply, the provision on which plaintiff appears to rely, 24 C.F.R. 203.378(c)(2) (2004), concerns "[d]amage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties," which would be factually inapplicable; ***(see [SA A071]***

(k) Finally, to the extent that count one alleges a violation of RESPA's inquiry-response provisions, namely, 12U.S.C. § 2605(e)(1) and (2), these sections apply only when the plaintiff sent a "qualified written request" for loan information, see 12 U.S.C. § 2605(e)(1)(B);

(l) In his amended complaint, plaintiff fails to allege that he sent defendant a qualified written request; ***(see [SA A071-79]***

(m) Furthermore, Congress excluded from RESPA's ambit "credit transactions involving extensions of credit . . . primarily for

business, commercial, or agricultural purposes", see 12 U.S.C. § 2606(a)(1); ***(see [SA A079]***

(n) Plaintiff twice acknowledged that he used the property primarily for commercial purposes;

(o) In his original complaint, plaintiff highlighted, "Between the years 1995 and 2001, the Plaintiff paid the mortgage note with the rental monies received from the Subject Property", Compl. at ¶ 35;

(p) Similarly, in his amended complaint, plaintiff complained that the tax sale compelled his "loss of income from the present tenants and any future tenants", Am. Compl. at ¶ 66(emphasis in original);

(q) Thus, plaintiff fails to state a claim under RESPA;

(r) For the above reasons, count one of plaintiff's complaint fails to state a claim for which relief can be granted;

(s) In count two, plaintiff appears to argue that, under the Mortgage Agreement and Note, defendant failed to satisfy his contractual obligation to "upset the Judicial Tax Sale", Am. Comp. at ¶ 61;

(t) Under Pennsylvania law, to plead a cause of action for breach of contract, one must point to "a breach of a duty imposed by the contract", Williams v. Nationwide Mut. Ins. Co.,750 A.2d 881, 884 (Pa. Super. 2000); see also Corestates Bank,N.A. v. Cutillo, 753 A.2d 1053, 1058 (Pa. Super. 1999);

(u) Aside from pointing to paragraph 10 of the Mortgage Agreement, which imposed no obligations on defendant, plaintiff points to no specific provision of the Mortgage Agreement or Note to support his claim that defendant agreed to prevent the judicial tax sale of his property;

(v) Thus, count two fails to state a claim for which relief can be granted;[2]

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[2] In his response to defendant's motion, plaintiff characterizes his breach-of-contract claim as a breach-of fiduciary duty or negligence claim. Pl.'s Resp. at 19-22. While courts hold **pro se** plaintiffs to a less exacting pleading standard than attorneys, plaintiffs must nevertheless plead to extent sufficient to notify defendants

(w) In count three, plaintiff asserts that defendant "failed in their obligation to regain Plaintiff's OWNERSHIP of the Subject Property and 'SECURITY INSTRUMENT'" and that" Plaintiff was deprived of his property when [defendant] failed to prevent the Subject Property from the judicial tax sale of June 13, 2001," Am. Compl. at ¶¶ 64, 65;

(x) To the extent plaintiff asserts a conversion claim or other type of tort claim, Pennsylvania's statute of frauds bars it see 42 Pa.C.S.A. § 5524(3) & (7); Johnson, 313 F.3d 128,135 (3d Cir. 2002), cert. denied, 124 S. Ct. 48 (2003);

(y) To the extent plaintiff claims defendant breached a contractual duty to regain his ownership of the property in question or prevent the June 13, 2001 tax sale, that claim misses the mark for the same reasons plaintiff's apparent breach-of contract claims fail in counts one and two: he identifies no contractual duty that defendant breached;

(z) In count four, plaintiff asserts a claim on behalf of HUD, alleging that defendant "reported false information to HUD which FRAUDULENTLY INDUCED the evaluation of HUD's final determination," Am. Compl. at ¶ 72;

(aa) Even if plaintiff's claim that defendant defrauded HUD were true, plaintiff alleges only that defendant deceived HUD, not him; therefore, plaintiff lacks standing to assert a fraud claim on HUD's behalf, see In re Allegheny Int'l, Inc., 954F.2d 167, 178 (3d Cir. 1992) ("Under Pennsylvania law, inducing *another* to enter into a contract by means of fraud or a material misrepresentation, when the other party was under no duty to enter the contract, is a key element of a claim for fraudulent inducement") (emphasis added);[3]

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about the specific legal basis for their alleged liability. Thus, plaintiff cannot save count two merely by restyling it as a tort claim in his motion-to-dismiss response. Even if he could, Pennsylvania's two-year statute-of-frauds would bar it. See 42 Pa.C.S.A. § 5524(7); Robinson v. Johnson, 313F.3d 128, 135 (3d Cir. 2002), cert. denied, 124 S. Ct. 48 (2003).

[3] In his response to defendant's motion, plaintiff argues that "Plaintiff in his Amended Complaint mistakenly referred to Fraudulent 'Inducement' by using the 'Common Definition' instead of the 'Legal Definition.'" Pl.'s Resp. at 25. Plaintiff then restyles his fourth claim as fraud instead of fraudulent inducement. While

(bb) Thus, plaintiff's fourth claim fails to state acclaim on which relief can bee granted; ***(see [SA A083-86]***

(cc) as for plaintiff's fifth claim, he himself concedes that it fails to state a claim and should be dismissed, Pl.'s Resp. at 4 ("Plaintiff agrees with Cendant that the FIFTH claim of action should be dismissed"); ***(see [SA A087-88]***

(dd) finally, in count six, plaintiff seeks to hold defendant liable for reporting "damaging credit information claiming that Plaintiff is in credit mortgage default to All three Credit Report Agencies (Trans Union, EquiFax and TrueCredit)," Am. Compl. at ¶ 87;

(ee) He also claims that defendant's reporting violated RESPA and unspecified HUD rules, Am. Compl. at ¶ 88;

(ff) As for defendant's reporting of damaging credit information about plaintiff, plaintiff nowhere claims that this reporting is false or incorrect; ***(see [SA A088-89]***

(gg) Thus, he fails to allege any type of fraud;

(hh) As noted above, there is no private right of action against a mortgagee based on alleged violations of HUD rules and regulations, see Roberts v. Cameron-Brown Co., 556 F.2d356, 360-61 (5th Cir. 1977); United States v. Thomas, 627 F.Supp.129, 136 (N.D.Ill. 1985);

(ii) Finally, to the extent that count could be construed to allege a violation of RESPA's inquiry-response provisions, namely, 12 U.S.C. § 2605(e)(1) and (2), these sections apply only when the plaintiff sent a "qualified written request" for loan information, see 12 U.S.C. § 2605(e)(1)(B); ***(see [SA A089]***

(jj) In his amended complaint, plaintiff never claims that he sent defendant a qualified written request and in any event RESPA is inapplicable because plaintiff twice acknowledged that he used the property primarily for commercial purposes, secondly. at ¶ 35; Am. Compl. at ¶ 66; see also 12 U.S.C. §2606(a)(1); ***(see [SA A090]***

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plaintiff's re-characterization may be meaningful technically, it is meaningless functionally: Plaintiff still claims only that defendant defrauded HUD, a third party.

(kk) Thus, count six fails to state a claim for which relief can be granted, ***(see [SA A090-176]***

It's hereby ORDERED that:

1. Defendant's motion to dismiss plaintiff's complaint in the entirety is **GRANTED**;

2. Defendant's motion for *leave to reply in further support of its motion to dismiss* is **GRANTED** and the Clerk of the Court Court is directed to file defendant's reply; and

3. The Clerk of Court shall CLOSE this matter statistically.

BY THE COURT:

/s/ Stewart Dalzell, J.

Appendix X

I) MOTION TO STAY BOGUS APPELLATE REVIEW OF ORDER OUT-OF-TIME

(1) the authoring Judge entered, on the docket, an **case-dispositive** order, which denied this 25 October 2006 *Motion for Rehearing out-of-time* of essentially **denying a Petition for Rehearing and the appeal.** This decision entered, **Authoring Judge may not deny without entire panel review"** which "an was entered on October 26 2006, ***(1) one day later***, making a panel review impossible;

(2) Nor does a **Single Judge** have the **authority** to dismiss or otherwise determine an appeal or other proceeding, since the denial of **this type of motion** 'Motion to File a Petition for Rehearing' OUT-OF-TIME would in fact deny any chance (the proceeding) to overturn the **final** decision of this appeal; similar to ***IOP 10.7.1*** SMP motions, just to touch all bases. ***(see IOP 10.5.1 and 10.5.2)***

(3) Along with the already established practice that treats every post-decision proceeding as both a Petition for Rehearing and Rehearing En Banc, SCOCCA included with this 'Motion for Rehearing' OUT-OF-TIME, the suggestion for review by the entire

panel **(Rehearing En Banc).** ***(see IOP 9.5.1)***

(4) IOP A(2) To insure decisional stability and avoid intra-circuit conflict of decisions by providing a means for the panel system to operate efficiently and at the same time **provide that a holding of a published opinion of the court may not be overruled without the approval of a majority of the en banc court;**

(5) Since, ***only active judges may vote on En Banc and*** any **Senior Judge** NOT **qualified at the time of the poll,** is not eligible to vote. therefore, this order which **denied** this Motion for Rehearing Out-Of-Time **denying** this Petition for Rehearing as a result, could not have been entered by Judge Van Antwerpen, Pursuant to ***28 U.S.C. § 46(c). (see IOP 9.5)***

(6) In fact, this Single **Judge**, Judge Van Antwerpen, the **Authoring Judge** as of **23** October 2006 a **Senior Judge** did not have the authority to enter **any** decision; neither to **Grant or** to **Deny** this Motion Out-Of-Time. Further, this **non-active** Judge may **only** enter an answer, order or opinion (etc) **transmitted** from the Chief Judge, an active Judge or the panel strictly in an administrative capacity. ***(see IOP 9.5.6 and 9.5.8)***

(7) The only possible action this **Senior Judge** Van Antwerpen is eligible to make is a request to the entire panel by letter, pursuant 28 USC 46(c) to continue participation in the final resolution of the case. ***(see IOP 9.6.4)***

(8) The Authoring Judge, **a Senior Judge** and a non-active member, may ***not administer nor vote*** for the denial of this Petition for Rehearing en banc *"A petition for rehearing of a case-dispositive ruling is referred to the court en banc"* ***(IOP rule 10.3.3);***

(9) If this were **truly reviewed** by the panel the assumption would be that, the Clerk of the Court mistakenly recorded this order without regard. The next question should be, why? Certainly, the authoring Judge would not overlook these rules, so once again, why? Furthermore, neither the authoring Judge nor the entire panel dismiss any appeal where a timely Petition for rehearing was received electronically and the Clerk of the Court received the HARDCOPY (1) one day untimely; if not for ***Rule 25*** *('a Petition For Rehearing is*

timely when electronically filed on the date due'), then for the mere fact that the Circuit Court's mailroom caused the delay under ***Rule 40 and Rule 26***. In any event, these circumstances involving delays with the Court's internal mailroom are completely out of **SCOCCA** 's control, *(insert-- that habeas corpus case where the untimelyness was caused by the prison guards)* but this does not change the fact that **this order appears on the docket**.

(10) **"The action of a single judge may be reviewed by the Court"** has exceptional relevance only when applied to a review of an order a single Judge has authority over. ***(see IOP 10.5.1)*** Without limiting IOP 10.5.1 "**this court as a matter of practice refers to a single judge, the following motions:...**" ***(see IOP 10.5.2)*** Since **a single judge may not** dismiss or otherwise determine an appeal or other proceeding; and the order denying **SCOCCA** 's **Motion for leave to file rehearing for out-of-time** was decided in (1) one day from a single Judge (the authoring Judge) this order is procedurally failed. ***(see IOP 10.8.1) "who has authority to grant an extension of time. If the authoring judge votes to deny, the motion is referred to the entire panel for disposition."***

(11) it would be a request to review something **not reviewable,** because it could not have happened in the first place. and without a 3rd circuit Precedential opinion for guidance **SCOCCA** submited this **"Motion for Stay of BOGUS Appellate Review",** for the record, until the U.S. Supreme Court can offer further direction.

(12) As it stands, **if** this ***'Motion to review order'*** was to play out the only result would be an answer to grant or deny, no opinion or explanation. Any **Writ of Certiorari** would have no chance in the Supreme Court to be accepted for review and No place to go, it stops dead, disposing of this case by manipulating the system from within. The Supreme Court will not review an Appellate Court decision especially one already reviewed by the Appellate Court. Problem solved, Cendant wins; **SCOCCA** goes away.

(13) Undeniably, the intention of Congress was to give the Clerk of the Court the authority to carry out administrative and procedural duties in compliance with the Constitution" and undeniable, is the extent and limits of that authority.

II) MOTION TO STAY MANDATE (*EN BANC*) (pursuant *IOP 10.8.2)* to PETITION for WRIT OF CERTIORARI to the U.S. SUPREME COURT

(14) The single most damaging discovery was when the Clerk of the Court was given the ability to place entries into the docket **backward** in time. (Reference **SCOCCA** 's ***Reply Brief*** filed July 27th 2006, entered by the clerk on September 20th 2006 and ***FALSELY NOTED IN THE DOCKET AS ENTERED*** August 8 2006). The relevance of an **incorrect** docket (list of motions, evidence, date of filing, etc) given to the Appellate Court Panel for appeal and **incomplete** list of documents filed can only be viewed **at the very minimum** a denial of due process. ***(see IOP 1.1 and 1.2)***

(15) A Chronological docket is essential to every rule governed by time restraints. If the Clerk of the Court has the ability to make entries ***'Willy Nilly'*** (when and where ever they see fit), this would invalidate every restriction imposed for untimelyness, not to mention the enormous impact on the correctness of every former case.

(16) The present factors which influence the Supreme Court's discretion to grant a Writ Of Certiorari in this instance are: (1) whether there has NOT been compliance with the rules of the Court (i.e. FRAP, LAR and IOP); (2) whether retention of Supreme Court's judicial control is necessary or practicable to achieve compliance of the Judicial System of the lower Court; and (3) whether **SCOCCA** has demonstrated to the Court in good faith commitment to the whole of those statutes and constitutional provisions that were the predicate to deny his Motion to file Petition out-of-time in the first place. The ultimate inquiry is whether the authoring judge complied in good faith with the rules of the IOP 10.8.1 and has the Appellate Court Justices en banc been given correct and complete documents under appeal and whether the vestiges of prejudices have been eliminated to the extent practicable to sustain ***"Right To Due Process"***.

(17) The Appellate Court Panel of Circuit Judges **DID NOT** hand down an opinion for the correctness of Federal District Court order of April 14 2006 denying **SCOCCA** 's Motion under FRCP rule 60(b)(1) "***excusable neglect***" or his Motion under FRCP rule 60(b)(2) "***Newly Found Evidence***" or was manifestly disregarded

from his appeal.

(18) Unfortunately, if we view the history of this complaint starting in the Federal District Court we find that it has been plagued with very similar administrative and procedural **errors of law**. If we were in a perfect world with a white picket fence where all mistakes are harmless and unintentional, then our Judicial System would be above reproach, almost non-human in nature and application and these errors of law would be called ***ODDITIES***; this is not the case. Reality is sobering, if not god sent; the Supreme Court does not possess the luxury to be that naïve.

(19) The 3rd Circuit Court system for administrative control is palpably "broken", a problem not uncorrectable, but must be dealt with assiduously, nonetheless. The ineffectiveness of the Court to control administrative and procedural deficiencies has superseded the merits of this appeal causing extreme Prejudice to **SCOCCA** and a denial of his Due Process Rights.

(20) The **entire** Appellate Court Panel is requested to review this Motion for stay of mandate for the following reasons 1) the seriousness and significance of these violations cannot be disregarded, as they dramatically influence the success of this writ of certiorari; 2) the implications will have long lasting effect on how the Appellate Court does business in the future. ***(see IOP 10.8.2)*** It is the practice of this court **to grant** such a motion if the failure to grant a stay affect **substantive right of the applicant**.

[*see* **'Motions(2) to stay…'** ***accepted (4 copies -- Fed Ex) by clerk on 9 November 2006; but never entered***]

Appendix X1

"…upon consideration of **Scocca**'s pro se motion for the recusal ……and ***the Court also finding that Plaintiff predicates his other motion (60(b))*** at least in part on "a conspiracy between the Court and Cendant," **see Pl.'s Mem., at 2,** it is hereby ORDERED that **both motions** are denied as frivolous." ***(District Court order (13 April 2006)***

Appendix X2

"In his Rule 60(b) motion, Scocca sought to extend the time for appealing from the denial of his two motions for reconsideration, arguing that he did not receive timely notice of those orders." **and** "An appeal from an order denying a motion for relief from a judgment under Rule 60(b) brings up only the correctness of the order denying that motion, not the underlying order." ***(Appellate Court Opinion (25 Sept. 2006)***

Appendix X3

"Relying on that rule, we have held that where the **sole basis for a Rule 60(b) motion is the lack of notice of the entry of an order,** the motion must meet the time limitations of Rule 4(a)."…. "An appeal from an order denying a motion for relief from a judgment under **Rule 60(b) brings up only the *correctness of the order*** denying that motion, ***not the underlying order***. See Torres v. Chater, 125 F.3d 166, 168 (3d Cir. 1997). **We review** the District Court's **denial** of a Rule 60(b) motion **for an abuse of discretion.** See Coltec Indus. v. Hobgood, 280 F.3d 262, 269 (3d Cir. 2002). **"We can affirm on any basis appearing in the record.** See Bernitsky v. United States, 620 F.2d 948, 950 (3d Cir. 1980)." ***(See Appellate-Court Opinion 25 September 2006)***

Appendix X4 *emphasis omitted*

I. The correctness of the District Court Reconsideration Of *Newly Found Evidence*

(1) **AT THE VERY MINIMUM:** The District Court where (1) the excluded ***Newly Found Evidence*** goes to the heart of the party's case and appears crucial to the outcome of the case, (2) the opposing party has used the excluded evidence as a shield to enhance his case and (3) the prejudice to the party opposing the admission of the evidence appears minimal, the district court abused its discretion in excluding the ***Newly Found Evidence*** and their order **was a reversible error.** ***(see Reply Brief and Motion***

for Relief 60(b)(2))

> **"... and the Court also finding that Plaintiff predicates his other motion at least in part on "a conspiracy between the Court and Cendant,"** see Pl.'s Mem., at 2, it is hereby ORDERED that both motions are DENIED AS FRIVOLOUS."***(see Federal Dist. Court April 13, 2006 order)***

(2) ***The District Court (April 13, 2006 Order) erred in not considering SCOCCA 's Rule 60(b) Newly Found Evidence claim after dismissing his Complaint in its entirety pursuant Rule 12(b)(6) Motion (see November 8, 2004 Order) AND erred in making a choice of law determination without giving the parties a chance to take discovery on key issues that would show which forum had the greatest interest in applying its laws to the dispute.*** "If during a trial without a jury a party **has been fully heard on an issue** and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim". ***Rule 52(c)(see Reply Brief A(2)(d))*** But SCOCCA has not had a chance to obtain all the evidence therefore he has not been fully heard; Understanding that the evidence presented sufficiently covers the issues to move this forward to a jury trial. 'Substantial evidence is evidence that is less than a preponderance, but more than a mere scintilla. Richardson v. Perales, 402 U.S. 389, 401 (1971). That is, it "does not mean a large or considerable amount of evidence, but rather 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Pierce v. Underwood, 487 U.S. 552, 565 (1988) (quoting Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)); accord Hartranft, 181 F.3d at 360."

Appendix 28 USC § 2111

"On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not **affect the substantial rights of the parties."**

Appendix 28 U.S.C. sec. 46(c)

"cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court en banc is ordered by a majority of the circuit judges of the circuit who are in active service." held: (a) this statute is simply a grant of power to order hearings and rehearing's en banc and to establish the procedure governing the exercise of that power. (c) the statute does not compel the court to adopt any particular procedure governing the exercise of the power; **but, whatever procedure is adopted, it should be clearly explained, so that the members of the court and litigants in the court may become thoroughly familiar with it.** ***(see Western pacific railroad corp. V. Western pacific railroad co. 345 us 247,(1953))***

Appendix FRAP Rule 47

"Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment" an extension of time sought can be after the expiration of the period originally prescribed..." and *"Procedure When There Is No Controlling Law,* an Appellate Circuit Court may regulate practice in any manner consistent with federal law, these rules, and local rules of the court."

Appendix FRAP Rule 27(c)

"A court of appeals may provide by rule or by order in a particular case **that only the court may act on any motion** or class of motions. The court may review the action of a single judge."

Appendix FRAP 25(a)(2)(D)

Electronic filing. "A court of appeals may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules."

Appendix FRAP 25(c)(4)

There is one exception to **Rule 25(c)(4)** that electronic service is ***complete upon transmission***: "If the sender is notified—by the sender's 'e-mail' program or otherwise—that the paper was not received, service is not complete, and the sender must take additional steps to effect service. A paper has been "received" by the party on which it has been served as long as the party has the ability to retrieve it." (this brings up the issue: **SCOCCA denied ECF access**)

Appendix IOP 10.8.1

"... a motion for leave to file out of time is referred to the author, who has authority to grant an extension of time. **If the authoring judge votes to deny, the motion is referred to the entire panel for disposition."**

Appendix IOP 10.8.2

"A motion for stay of mandate or for the recall of the mandate, **is processed as in** IOP **10.8.1**. It is the practice of this court not to grant such a motion **unless the failure to grant a stay affects a substantive right of the applicant**."

(2)

IN THE SUPREME COURT OF THE UNITED STATES

FILED
JUN 14 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

INDEX No: 06-1272

RICHARD A. SCOCCA JR

Petitioner

v.

CENDANT MORTGAGE CORPORATION,
f/h/a PHH US MORTGAGE CORPORATION

Respondent

MOTION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE THIRD CIRCUIT-COURT OF APPEALS

RE: Civil Action Index No. **2:04-cv-00704-SD**
Third Circuit-Court Appeal No. **06-2477**

Dr. RICHARD A. SCOCCA JR
'Pro Se'

Punto Di Oro #17
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----- *QUESTIONS* -----

1) Can a **Clerk** of the 3rd Circuit Court refuse to enter or negligently omit a **timely** ***'Petition for Rehearing'*** filed electronically?

2) Can a Single *SENIOR* 3rd Circuit Judge, deny a timely filed *'Motion to File a Petition for Rehearing Out-Of-Time'* without panel review?

Parties to the Proceedings

The parties to the proceedings in the Pennsylvania Court of appeal included Cendants Mortgage Corporation and petitioner Richard A **Scocca** Jr. there are no parties to the proceeding other than those named in the petition.

Petition for *Rehearing* of Writ of Certiorari

The petitioner, Richard A **Scocca** Jr respectfully petitions this Court for rehearing of his writ of certiorari to review the ORDER of the Pennsylvania Court of appeal.

Opinions Below

Attached as Appendix (one-page ORDER) is the subject of this petition entered 25 October 2006 by the single Senior 3rd Circuit-Court Judge Van Antwerpen, denying a '***Motion to file a Petition for Rehearing (out-of-time)***'.

Jurisdiction

Scocca's [Writ of Cert. US. 06-1272] **was timely filed.** The decision of the Supreme Court to deny, was entered 21 May 2006; this Petition for Rehearing is within 25 days of that date.

Petitioner invokes this Court's jurisdiction under 28 U.S.C. §2072(a). The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States Courts of appeals and 28 U.S.C. §1254(1). ***(see Scocca's [Writ of Cert. US. 06-1272 (pg. 1-3)]***

Statement of Issues

Clerk either refused to enter or negligently omitted documents filed with the court

The 3rd Circuit Court entered their opinion on 25 September. The **Clerk** (***Rule 25(a)***) either refused to enter or negligently omitted, **Scocca**'s **timely** *(10 October 2006)* ***'Petition for Rehearing'*** ***filed electronically*** and hardcopies sent via international (ARUBA) airmail.

Instead, the **Clerk** issued a letter of non-compliance on the due date for a response; *(16 October 2006)* also ignoring the hardcopies(10) received on that same date (**postmarked** ***10*** **October 2006**). The postmark of ***10 October 2006*** is only relevant in that it shows

Scocca's **timely** *(10 October 2006)* ***'Petition for Rehearing'*** ***filed electronically*** and hardcopies sent via international (ARUBA) airmail.

Instead, the **Clerk** issued a letter of non-compliance on the due date for a response; *(16 October 2006)* also ignoring the hardcopies(10) received on that same date (**postmarked** ***10*** **October 2006**). The postmark of ***10 October 2006*** is only relevant in that it shows compelling evidence for compliance. ***(see Scocca's [Writ of Cert. US. 06-1272 (pg. 9-14)]***

Rule 25 (a)(2)(D) presently authorizes the Courts of appeals to permit papers to be **filed** by electronic means. **Rule 25** has been amended in several respects to permit papers also to be **served electronically**. In the 3rd circuit-Court of appeal, an electronically filed petition for rehearing should be directed to electronic address: ***petitions_rehearing@ca3.uscourts.gov;*** which **Scocca** overlooked and on 10 October 2006 mistakenly used the electronic address previously used for his Briefs, ***electronic_briefs@ca3.uscourts.gov***. Both of which are directed to the same location, the difference, effect the distribution to 'a' particular clerk; at that point it is **entirely under Human control.** ***(see Scocca's [Writ of Cert. US. 06-1272 (pg. 5&20-22)]***

Single *Senior* Judge DENIED a 'Petition for Rehearing *(out-of-time)*' *without panel review*

On *25* October 2006, **Scocca** **timely** (***electronically***) **filed** his ***'Motion to File a Petition for Rehearing Out-Of-Time'*** in compliance with the **Clerk's** letter. That **same day** (*25* October) this Single (***SENIOR***) 3rd Circuit Judge(Van Antwerpen) and the **only** Circuit Judge present, **denied** his ***'Motion'*** **without panel review,** knowing that the 3rd Circuit Appellate Court traditionally grants *petitions for rehearing out-of-time.* ***(see Appendix 'A') (see also Scocca's [Writ of Cert. US. 06-1272 (pg. 4-9)]***

> "we generally consider a motion to file a petition for rehearing 'out of time' reasonable when the request is made within the ninety-day period for filing a petition for writ of certiorari. Likewise, we generally consider a delay unreasonable when the motion is made after the ninety-day period has expired. Nonetheless, as is **our traditional practice**, we deemed his petition as a "motion to file petition for rehearing out of time",

and **granted** it." ***United States v. Wall, Nos. 042380, 052019 3d cit 2006***

This *SENIOR* 3rd Circuit Judge(Van Antwerpen) knew or should have known that any petition for rehearing out of time if denied, must be presented to the 3rd circuit panel for review and decision. Since this decision was made on the **same day** it was received by the Court and this Senior Judge was the **only** Circuit Judge present, ***'panel review'*** **was physically and logistically impossible; therefore, could not have been accomplished.** ***(see Scocca's [Writ of Cert. US. 06-1272]***

The principal issue raised is whether a single circuit judge in *senior* status has jurisdictional authority to deny a '*motion for leave to file petition for rehearing out-of-time* without review of the Circuit Court. Specifically, it implicates the practice of permitting a single Judge with the power to dismiss an appeal with errors or at all, contrary to ***Rule 46(c). (see Scocca's [Writ of Cert. US. 06-1272 (pg.42-46)]***

Within the general consideration of procedure on motions is the problem of the power of a single circuit judge. Certain powers are granted to a single judge of a Court of appeals by statue. (see ***FRAP rule 27(c))*** This section preserves the interpretation established by the ***Textile Mills*** case but provides in subsection *"(c) that cases shall be heard by a Court of not more than three judges unless the Court has provided for hearing en banc."* This provision continues the tradition of a three-judge appellate Court and makes the decision of a division, **the decision of the Court**, unless rehearing en banc is ordered. Subsec.(c) Pub.L.97-164, §§103(c), 205. except that any senior circuit Judge of the circuit shall be **eligible to participate**, at his election and upon designation and assignment pursuant to section **294(c)** of this title and the rules of the circuit, as a member of the en banc court reviewing a decision of a panel of which such judge was a member, continue to participate in the decision of a case or controversy '**that was heard** or reheard by the Court **en banc** at a time **when such Judge was in regular active service'**.

We need not decide which Rule controls the present case, because neither authorizes a single Judge's action here. Furthermore, those various sections of the Judicial Code provide that each of these functions shall be performed by the Court. ***(see Scocca's [Writ of Cert. US. 06-1272 (pg. 12-19)]***

Pursuant to Rule 27(c). the 3rd Circuit Court of Appeals made it clear in **IOP 10.8.1** that the authoring Judge has authority to **grant** a 'motion for rehearing out-of-time' and just as clear, **only** the Circuit Court **may act when the authoring judge votes to deny** the motion. Furthermore, it **must be** referred to the **entire(active) panel for disposition.** ***(see Scocca's [Writ of Cert. US. 06-1272 (pg. 23-29)]***

In fact, this Single Judge, Judge Van Antwerpen, **was** the authoring Judge **until** ***23 October 2006***. but at the time of this motion, ***(26 October 2006)*** a **Senior Judge;** he **DID NOT** *have the authority to enter any decision*; **NEITHER** to ***Grant*** **or** to ***Deny*** a motion out-of-time. Further, this ***non-active*** Judge **may only enter** an answer, order or opinion(etc) ***transmitted from*** the Chief Judge, an active Judge or the panel. In addition, only and **strictly in an administrative capacity.** ***(see IOP 9.5.6 and 9.5.8 and Appendix 'A')***

It is well established in the 3rd Circuit Court to treat every post-decision proceeding **as both** a Petition for Rehearing and Rehearing '***en banc***'. ***(see IOP 9.5.1)***

Since, **only active Judges may vote on En Banc** and any Senior Judge **NOT qualified** *at the time of the poll, is not eligible to vote,* as a result, this order which denied the motion for *Rehearing Out-Of-Time* **also denied the Petition for Rehearing.** Furthermore, this order by Judge Van Antwerpen is ***jurisdictionally failed,*** pursuant to ***28 USC §46(c). (see IOP 9.5)***

The Supreme Court stands as the last resort in adjudication of the issues litigated. The petitioner was entitled to have this portion of the record included, and that the Circuit Court of Appeals had jurisdiction, but was ***administratively eliminated***. This Court has to entertain this writ of cert as the ***'Circuit Police'***, not for the purpose of passing on the merits, but to direct the reformation/correction of the Judicial System. The question before the Supreme Court is not whether you, as Supreme Court Justices, would have come to the same conclusions, as did the Single Senior Judge, ***It is whether the 3rd Circuit Court abused their discretion to allow Scocca's 'Motion for Rehearing out-of-time' to be denied without review.*** *(see* also ***Scocca's [Writ of Cert. US. 06-1272 (pg. 1-30)]***

Certification of Restrictions

The grounds for this ***Petition for Rehearing*** contain intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented; it is presented in good faith and not for delay and meets the required line and word count.

28 USC § 1746 Declaration Under Penalty of Perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (June 11, 2007)

"(RA Scocca Jr)"

As applied under 18 USC § 1621. Perjury.

Dr. Richard A Scocca Jr
scocca_richard@yahoo.com

appendix 'A'

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

October 25, 2006

NO: 06-2477

RICHARD A. SCOCCA JR.

Appellant

vs.

Cendant Mortgage Corporation, f/h/a PHH US Mortgage Corp.
(Eastern District of Pennsylvania Civil No. 04-cv-00704)

PRESENT: Van ANTWERPEN Circuit Judge

Motion by appellant for leave to file Petition for Rehearing Out Of Time

Opinion and Judgment entered 9/25/06

Carmella L. Wells
Case Manager

ORDER

The foregoing motion by Appellant for leave to file petition for **Rehearing Out Of Time** is **denied**.

By the Court,
/s/ Franklin S. Van Antwerpen
Circuit Judge

Dated: October 26, 2006

CLW/CH/cc: Richard A **Scocca** Jr
Jennifer A.L Battle, Esq.
Carl A. Solano, Esq